

Baker & Hostetler LLP

45 Rockefeller Plaza

New York, NY 10111

Telephone: (212) 589-4200

Facsimile: (212) 589-4201

*Attorneys for Irving H. Picard, Trustee for the
Substantively Consolidated SIPA Liquidation of
Bernard L. Madoff Investment Securities LLC and
the estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation of
Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

FEDERICO CERETTI, et al.,

Defendants.

No. 08-01789 (SMB)

SIPA LIQUIDATION
(Substantively Consolidated)

Adv. Pro. No. 09-01161 (SMB)

**THE TRUSTEE'S SUPPLEMENTAL MEMORANDUM OF LAW
IN OPPOSITION TO CERTAIN DEFENDANTS' MOTION TO DISMISS
BASED ON EXTRATERRITORIALITY AND IN FURTHER SUPPORT OF
TRUSTEE'S MOTION FOR LEAVE TO AMEND COMPLAINTS**

The Trustee respectfully submits this supplemental memorandum in opposition to the consolidated motion to dismiss,¹ which was joined by the following defendants in this proceeding:

- Federico Ceretti (“Ceretti”)
- Carlo Grosso (“Grosso”)
- Kingate Management Limited (“KML”)
- FIM Limited and FIM Advisers LLP (together, “FIM”)
- The Ashby Trust² and El Praela Trust³ (together, the “Trusts”)
- First Peninsula Trustees Limited,⁴ Alpine Trustees Limited, and Port of Hercules Trustees Limited⁵ (together, the “Trustees”)
- Ashby Holdings Services Limited⁶ and El Praela Group Holding Services⁷ (together, the “Holding Companies”)
- Ashby Investment Services Limited⁸ and El Praela Trading Investments Limited⁹ (together, the “Investment Shells,” and together with the Trusts, Trustees, and Holding Companies, the “Shell Companies”)
- Citi Hedge Fund Services Limited, f/k/a BISYS Hedge Fund Services Limited, and successor to Hemisphere Management Limited¹⁰ (“Citi Hedge”)
- HSBC Bank Bermuda Limited f/k/a Bank Bermuda Limited¹¹ (“HSBC,” and together with Citi Hedge, the “Service Providers”).

¹ The Trustee submits this memorandum in opposition to the motion to dismiss and in further support of the Trustee’s motion for leave to amend complaints, in accordance with this Court’s Order Concerning Further Proceedings on Extraterritoriality Motion and Trustee’s Omnibus Motion for Leave to Replead and for Limited Discovery with appended Exhibits A-C entered on December 10, 2014 (No. 08-01789 (SMB), Doc. 8800), as modified by the Stipulations and Orders entered on January 14, 2015 (*id.*, Doc. 8990), February 24, 2015 (*id.*, Doc. 9350), and April 1, 2015 (*id.*, Doc. 9720). This memorandum supplements the Trustee’s main memorandum of law (“Trustee’s main brief”) filed contemporaneously with this memorandum.

² Grosso’s trust.

³ Ceretti’s trust.

⁴ The Ashby Trust’s trustee.

⁵ El Praela Trust’s trustee.

⁶ Grosso’s holding company.

⁷ Ceretti’s holding company.

⁸ Grosso’s investment shell company.

⁹ Ceretti’s investment shell company.

¹⁰ Compl. ¶¶ 72-78.

¹¹ Compl. ¶ 79.

All defined entities above are collectively referred to as the “Transferee Defendants.” The Transferee Defendants seek dismissal of the Trustee’s Fourth Amended Complaint (the “Complaint”)¹² against them (the “Motion”) on the ground that it is barred as a matter of law by *Morrison v. National Australia Bank Ltd.*, 561 U.S. 247 (2010), as applied without consideration of the facts in this proceeding by District Judge Rakoff in *Securities Investor Protection Corporation v. Bernard L. Madoff Investment Securities LLC*, 513 B.R. 222 (S.D.N.Y. 2014).¹³

ARGUMENT

The Trustee seeks to recover from the Transferee Defendants property or its value initially transferred by BLMIS, an NASD-registered broker-dealer in New York, to two feeder fund customers—Kingate Global Fund, Ltd. (“Kingate Global”) and Kingate Euro Fund, Ltd. (“Kingate Euro”) (collectively, the “Kingate Funds”)—established by Ceretti and Grosso to invest exclusively with BLMIS’s investment advisory business (“IA Business”). The Transferee Defendants are immediate or mediate transferees of the Kingate Funds that received customer property through myriad transfers (the “Transfers”)¹⁴ designed by Ceretti and Grosso to extract hundreds of millions of dollars from BLMIS for their benefit. The Transfers, as described in the Complaint,¹⁵ include at least \$300 million in fees received by KML and FIM;¹⁶ at least \$296 million in dividends and other payments received by Ceretti and Grosso and the Shell

¹² The Complaint was filed on March 17, 2014. Adv. Pro. Doc. 100.

¹³ In opposition to the Motion, the Trustee is not proffering separate allegations on the domestic nature of the transfers to the Transferee Defendants, and is relying on his Complaint, documents referenced in the Complaint, and factual information as to which this Court may take judicial notice. *See, e.g., In re Lyondell Chem. Co.*, 505 B.R. 409, 418 (S.D.N.Y. 2014) (“[F]or purposes of determining the sufficiency of a Rule 12(b)(6) claim, a court may consider: (1) factual claims in the plaintiffs complaint; (2) the exhibits accompanying the complaint or documents incorporated by reference; (3) documents in the plaintiffs possession or of which the plaintiff had knowledge and relied upon in bringing the case; and (4) matters of which judicial notice may be taken.”) (citing *Chambers v. Time Warner, Inc.*, 282 F.3d 147, 153 (2d Cir. 2002)); *see also S.E.C. v. Gruss*, 859 F. Supp. 2d 653, 657 (S.D.N.Y. 2012); *In re Scheckard*, 394 B.R. 56, 65 (E.D. Pa. 2008) (bankruptcy court may take judicial notice of filings on its docket).

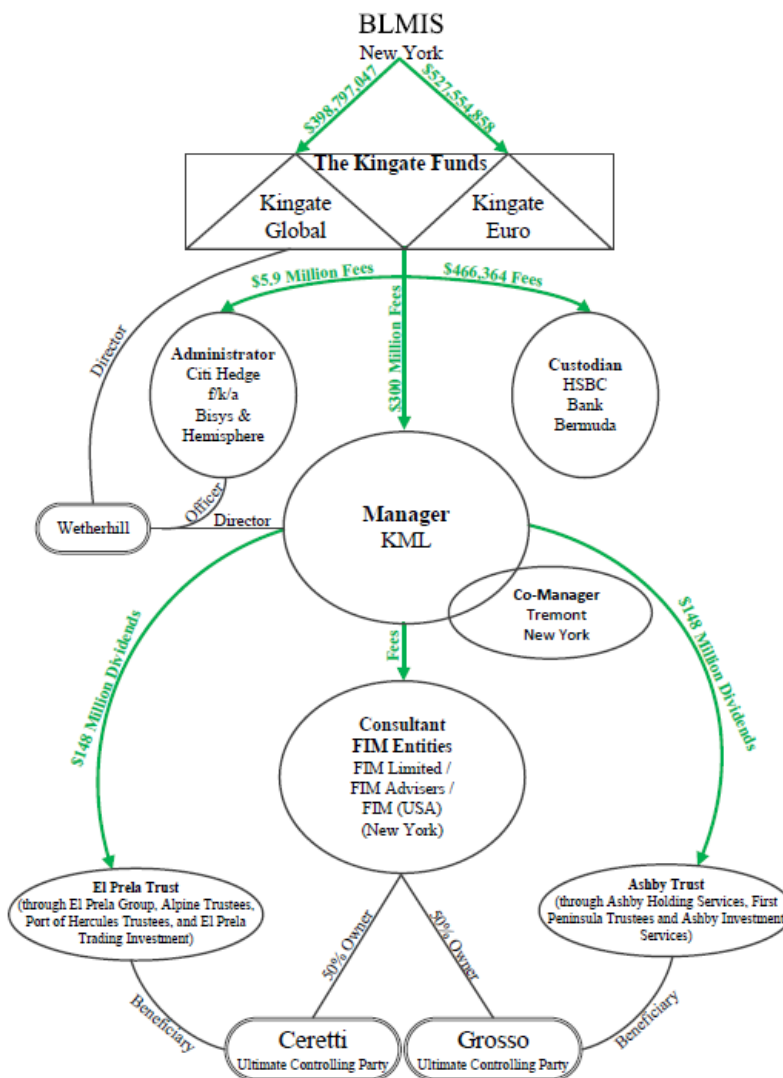
¹⁴ The Trustee has reserved his right to add information regarding the Transfers and seek recovery of additional subsequent transfers following discovery in this proceeding. Compl. ¶ 260.

¹⁵ *See* Compl. ¶¶ 253-61.

¹⁶ Compl. ¶¶ 110, 254.

Companies;¹⁷ at least \$5.9 million in fees received by Citi Hedge;¹⁸ and at least \$466,364 in fees received by HSBC.¹⁹ The Transfers do not include redemptions paid to subscribers in the Kingate Funds.

The structure of the Kingate Enterprise (as defined on page 5) and the Transfers is shown graphically in the chart below:



¹⁷ Compl. ¶¶ 255-56.

¹⁸ Compl. ¶ 257.

¹⁹ Compl. ¶ 258.

Under *Morrison*, which sets the standard for determining whether a transaction is extraterritorial, the court must consider the context and focus of the governing law.²⁰ Judge Rakoff determined that in the context of an avoidance action, as here,²¹ the nature of the transaction—whether foreign or domestic—is determined by the location of the transfers and the component events of the underlying transactions.²² According to Judge Rakoff, transfers whose components are “purely foreign” are extraterritorial transfers.²³ Consistent with this view, a decision of the U.S. Court of Appeals for the Second Circuit rendered after the Extraterritoriality Decision declined to treat any single factor as definitive in the extraterritoriality inquiry.²⁴ Taking into account the economic reality of the securities transaction at issue,²⁵ the Second Circuit instructed that determining the “foreignness” of a transaction depended upon multiple factors, including whether the transaction involved foreign securities traded entirely on foreign exchanges.²⁶

Determining whether the Transfers in this proceeding are domestic or foreign also requires that the Court consider the economic reality of the Transfers. The specific facts alleged in the Trustee’s Complaint, exhibits to the Complaint, documents in the Trustee’s possession upon which he relied in bringing the Complaint, and matters of which the Court may take

²⁰ *Morrison*, 561 U.S. at 273.

²¹ Because BLMIS made the initial transfers to the Kingate Funds, the Complaint seeks to avoid the initial transfers made to the Kingate Funds (which are not affected by the Extraterritoriality Decision) and recover the transferred customer property from the Kingate Funds and the Transferee Defendants.

²² *Secs. Investor Prot. Corp. v. Bernard L. Madoff Inv. Secs. LLC*, 513 B.R. 222, 227 (S.D.N.Y. 2014) (“Extraterritoriality Decision”) (quoting *In re Maxwell Commc’n Corp.*, 186 B.R. 807, 817 (S.D.N.Y. 1995).

²³ Extraterritoriality Decision at 231-32; *Picard v. Bureau of Labor Ins.*, 480 B.R. 501, 524-26 (Bankr. S.D.N.Y. 2012) (in the context of an avoidance action relying upon the fact-specific legal standard, as set forth, e.g., in *Maxwell Commc’n Corp.*, 186 B.R. at 807, for determining whether the application of section 550 was extraterritorial).

²⁴ See *Parkcentral Global Hub Ltd. v. Porsche Auto. Holdings SE*, 763 F.3d 198, 213, 215-16 (2d Cir. 2014).

²⁵ *Id.* at 213 (acknowledging that in reconciling *Morrison* to the facts before it, the lower court considered the economic reality of the swap transactions); see also *Absolute Activist Value Master Fund Ltd. v. Ficeto*, 677 F.3d 60, 69 (2d Cir. 2012) (presence of some foreign activity does not render a transaction extraterritorial under *Morrison*).

²⁶ *Parkcentral*, 763 F.3d at 215-16 (in determining whether a statute can be applied extraterritorially, recognizing the court must consider “the foreignness of the facts constituting the defendant’s alleged violation.”); see also *Absolute Activist*, 677 F.3d at 69.

judicial notice²⁷ show that the component events of the Transfers are domestic. In particular, the economic reality of the Transfers is that they arose from the Kingate Funds' exclusive investment transactions with BLMIS in New York and consisted of BLMIS customer property on deposit in New York.²⁸ Neither the place of formation nor residence of the Transferee Defendants in a foreign jurisdiction, or the number of times the Transfers changed hands among the Transferee Defendants, alters the nature of the Transfers as customer property that the Trustee is entitled to recover under SIPA,²⁹ or renders them purely foreign.³⁰ Even if the Court were to find that the location of the Transfers was abroad, that would not alter the fact that the Transfers were comprised of customer property removed from the United States ("U.S.") with conscious disregard of BLMIS's fraudulent activities. The Motion, therefore, should be denied.

I. The Transfers Are Domestic in Nature.

A. The Transfers Were Made Through Entities Formed to Profit From BLMIS in New York.

The Transfers comprise BLMIS customer property transferred to the Kingate Funds and subsequently transferred by the Kingate Funds to the Transferee Defendants to achieve a single economic purpose: to profit from a New York-based investment operation.³¹ Like parts of a compound machine that achieve the desired results when operating in unison, the Kingate Funds,

²⁷ See *Lyondell Chem. Co.*, 505 B.R. at 418. While the Complaint on its face sufficiently pleads domestic transfers, the Trustee asks the Court to take judicial notice of information in the public record, attached to the Declaration of Gonzalo S. Zeballos ("Zeballos Decl.") as Exhibits A - E. See *In re Foreign Exchange Benchmark Rates Antitrust Litig.*, No. 13 Civ. 7789 (LGS), 2015 WL 363894, at *3-5 & n.4 (S.D.N.Y. Jan. 28, 2015).

²⁸ Compl. ¶¶ 8, 247-61, 331.

²⁹ 15 U.S.C. § 78fff-2(c)(3).

³⁰ *Absolute Activist*, 677 F.3d at 69 (the *Morrison* analysis depends on a case's specific facts; residency or citizenship of a party does not affect where a transaction occurs); *In re Maxwell Commc'n Corp.*, 170 B.R. 800, 809 (Bankr. S.D.N.Y. 1994) (deciding whether a transaction is domestic requires looking at the facts "to determine whether they have a center of gravity outside the United States. Thus, for example, a transfer made in the U.S. by a foreign national to a foreign national conceivably could be considered a domestic transaction.").

³¹ Compl. ¶¶ 8, 96, 247-61, 331.

New York-based FIM (USA) Inc.,³² and the Transferee Defendants (collectively, the “Kingate Enterprise”) formed one enterprise dedicated to making money from BLMIS.³³ The Kingate Enterprise worked by having the Kingate Funds solicit subscriptions from investors through representations in Information Memoranda they published and through other marketing efforts,³⁴ and deposit subscription revenue in U.S. dollars with BLMIS,³⁵ routed through HSBC,³⁶ for investment in U.S. securities on domestic exchanges.³⁷ The Kingate Funds made withdrawals from BLMIS’s customer property, and the Transferee Defendants received a substantial portion of those withdrawals in fees, dividends, and other payments.³⁸ The Kingate Enterprise would not have existed but for BLMIS, just as the Transfers would not have existed but for the Kingate Funds’ initial withdrawals of BLMIS customer property. Each member of the Kingate Enterprise was necessary to accomplish its objective.

The component events here began with Sandra Manzke’s personal introduction of Ceretti and Grosso to Madoff.³⁹ Manzke was a New York-based hedge fund manager and founder of a hedge fund player, Tremont.⁴⁰ The Tremont funds also invested with BLMIS and ultimately

³² Compl. ¶¶ 83-85. FIM (USA) Inc. (“FIM (USA)”) was a Delaware corporation owned and controlled by Ceretti and Grosso. Compl. ¶ 37. FIM (USA) was dissolved on June 17, 2009 (Compl. ¶ 85) and, therefore, is not named as a defendant. At all relevant times, however, FIM (USA) in New York actively participated in the Kingate Enterprise and interacted directly or indirectly with BLMIS in New York. Compl. ¶¶ 83-85, 87, 99.

³³ Compl. ¶¶ 2-7, 42, 96.

³⁴ Compl. ¶¶ 47, 52, 84-85, 106-07.

³⁵ Compl. ¶¶ 2-3, 41, 47 (May 1, 2000 Kingate Global Info. Mem. “Functional Currency” at KGFSAD0001778 (“The Fund’s functional currency, i.e., the currency in which it maintains its books and records, its financial statements and invests its assets, is the U.S. dollar.”); May 1, 2000 Kingate Euro Info. Mem. “Functional Currency; Currency Hedging” at KGFSAD0000947 (“[T]he investment Advisor invests the Fund’s assets in U.S. dollar-denominated securities.”)).

³⁶ Compl. ¶¶ 80, 88, 92.

³⁷ Compl. ¶ 47 (May 1, 2000 Kingate Global Info. Mem. “Investment Process” at KGFSAD0001798 (investment advisor utilizes a “split-strike conversion” strategy” entailing the purchase and sale of S&P stocks and options); May 1, 2000 Kingate Euro Info. Mem. “Investment Process” at KGFSAD0000953 (same)).

³⁸ Compl. ¶¶ 3-5, 8, 45, 54, 57-59, 60-61, 63, 66-70, 86, 106-10, 113, 145, 245-46, 253-58.

³⁹ Compl. ¶ 94.

⁴⁰ Compl. ¶¶ 94-95; *see also Picard v. Tremont Group Holdings, Inc.*, Adv. Pro. No. 10-05310 (BRL) (Bankr. S.D.N.Y.) (Doc. 4 ¶¶ 2, 58). For example, Kingate Global’s May 1, 2000 Information Memorandum (“Management” at KGFSAD0001795) stated that “Manzke has been President and Director of Tremont Advisers,

became among the largest and longest running funds that enabled Madoff to prolong his fraud.⁴¹ With the knowledge gained from Manzke and the Tremont funds, Ceretti and Grosso in 1994 formed Kingate Global⁴² in the British Virgin Islands (“BVI”) as an investment fund for the sole purpose of investing with BLMIS.⁴³ In 1996, a sub-fund of Kingate Global opened its own account for exclusive investment with BLMIS.⁴⁴ In 2000, that sub-fund became a separate BLMIS feeder fund, Kingate Euro.⁴⁵ Kingate Euro, also organized in the BVI,⁴⁶ was operated, dominated, and controlled by Ceretti and Grosso jointly and in the same way as they operated, dominated, and controlled Kingate Global.

The Kingate Funds each engaged a manager and service providers—the requisite structure for such investment funds.⁴⁷ Ceretti and Grosso formed a new company, KML,⁴⁸ in Bermuda⁴⁹ to be the Kingate Funds’ manager. Ceretti and Grosso were KML’s beneficial owners,⁵⁰ and they dominated and controlled that entity.⁵¹ One of Manzke’s companies, Tremont (Bermuda) Limited (“Tremont Limited”), as discussed more fully below, operating from New York, also co-managed Kingate Global with KML for approximately 10 years.⁵²

Ceretti and Grosso caused KML to enter into a consulting agreement with FIM Limited,

Inc., a U.S. public company, since 1984. Ms. Manzke also serves as Chairman and President of Tremont Partners, Inc. and President and Director of Tremont (Bermuda) Limited.” Compl. ¶ 47.

⁴¹ Compl. ¶¶ 94-95; *see also Tremont Group Holdings*, Adv. Pro. No. 10-05310 (BRL) (Doc. 4 ¶ 85).

⁴² Compl. ¶¶ 2, 94-95.

⁴³ Compl. ¶¶ 38-39, 96.

⁴⁴ Compl. ¶ 41.

⁴⁵ Compl. ¶ 41.

⁴⁶ Compl. ¶ 40.

⁴⁷ Compl. ¶¶ 46, 73, 80.

⁴⁸ Compl. ¶¶ 4, 45.

⁴⁹ Compl. ¶ 44. KML’s and the other Transferee Defendants’ respective places of organization and foreign registered addresses are not dispositive under *Morrison* and its progeny as to the location of the Transfers. *See, e.g., Absolute Activist*, 677 F.3d at 69 (analysis under *Morrison* depends on a case’s specific facts; residency or citizenship of a party does not affect where a transaction occurs).

⁵⁰ Compl. ¶¶ 5, 45. KML is in a liquidation proceeding in Bermuda. On December 11, 2008 (the “Filing Date”), KML was directly and equally owned by the Holding Companies following a transfer of ownership by the Trusts. Compl. ¶ 13.

⁵¹ Compl. ¶¶ 5, 45, 54, 59, 63, 67, 121, 131.

⁵² Compl. ¶¶ 106, 113. Tremont Limited is not named a defendant in this proceeding, because the Trustee filed a separate avoidance proceeding against Tremont that settled in 2011.

an experienced investment advisory firm, which later was succeeded by FIM Advisers.⁵³ KML was a new company and needed operational, administrative, marketing, accounting, and other consulting services⁵⁴ that the FIM entities, including FIM and FIM (USA) (“FIM Entities”), had the capacity to provide.⁵⁵ While FIM (USA) existed, FIM made no distinction in billing for the services performed in New York, and FIM and FIM (USA) were treated as one company.⁵⁶ Grosso founded FIM Limited in London and served as its executive chairman.⁵⁷ Ceretti and Grosso were equal owners of FIM Limited⁵⁸ and founding members of FIM Advisers.⁵⁹ FIM Limited was the managing member of FIM Advisers, and was FIM Advisers’ immediate and FIM (USA)’s ultimate parent.⁶⁰ Ceretti and Grosso were the sole directors of FIM Limited, the designated members of FIM Advisers, and dominated and controlled the FIM Entities.⁶¹

⁵³ Compl. ¶¶ 5, 110-12.

⁵⁴ Compl. ¶¶ 104-06, 110.

⁵⁵ Compl. ¶¶ 104, 110-12.

⁵⁶ Compl. ¶¶ 5, 84-85, 110.

⁵⁷ Compl. ¶ 35.

⁵⁸ This information was reflected in FIM Limited’s Annual Returns filed with Companies House, an agency of the UK government responsible for the incorporation of limited companies in England and Wales and for holding information which companies are under a statutory obligation to file, such as accounts, shareholder and director details, and financial information. The FIM Limited Annual Returns are publicly available at <http://wck2.companieshouse.gov.uk/> (follow “Order information on this company;” the reports are available under the header “Type” of “363a”), and are properly subject to judicial notice. *See* Fed. R. Evid. 201; *Refco Group Ltd., LLC v. Cantor Fitzgerald, L.P.*, No. 13 Civ. 1654(RA), 2014 WL 2610608, at *15 & n.16 (S.D.N.Y. June 10, 2014) (relationships between defendant entities detailed in regulatory filings are the proper subject of judicial notice, as they “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned”) (quoting Fed. R. Evid. 201(b)(2)); *Foreign Exchange Benchmark Rates*, 2015 WL 363894, at *3-4 & n.4 (taking judicial notice of information obtained by various governments’ agencies); *see also supra* notes 13, 27. *See, e.g.*, Ex. A to Zeballos Decl. (FIM Limited Annual Return (July 9, 2007)).

⁵⁹ Compl. ¶ 36.

⁶⁰ Compl. ¶¶ 5, 35-37. This information was reflected in audited Reports and Financial Statements FIM Limited and FIM Advisers filed annually with Companies House. The FIM Reports and Financial Statements are publicly available at <http://wck2.companieshouse.gov.uk/> (follow “Order information on this company;” the reports are available under the header “Type” of “AA”), and are properly subject to judicial notice. *See supra* notes 13, 27, 58. The FIM Limited financial statements provided consolidated financial information on its subsidiaries, including FIM Advisers and FIM (USA).

⁶¹ Compl. ¶¶ 5, 35-37. The FIM Limited consolidated financial statements expressly stated that “FIM Limited is jointly owned and controlled by C Grosso and F Ceretti.” *See, e.g.*, Ex. B to Zeballos Decl. (FIM Limited Report and Financial Statements (Dec. 31, 2007)); Ex. C to Zeballos Decl. (FIM Advisers LLP’s Report and Financial Statements (Dec. 31, 2007)). Certain officers and directors of the FIM Entities overlapped, including Thomas Healy, who was secretary of FIM Limited, a member of FIM Advisers, and a director of FIM (USA), and Scott Dragoo, who was a member of FIM Advisers and a director of FIM (USA). *Id.* Ex. D to Zeballos Decl. (FIM Advisers LLP’s Report and Financial Statements (Dec. 31, 2008)).

Ceretti and Grosso selected HSBC, a Bermuda bank, as custodian for the Kingate Funds.⁶² HSBC was a familiar custodian for feeder funds to BLMIS and has been named as a defendant in other proceedings commenced by the Trustee.⁶³ HSBC received and held the Kingate Funds' subscription money⁶⁴ and transferred the Kingate Funds' investment money to BLMIS in U.S. dollars. Ceretti and Grosso also engaged Citi Hedge, based in Bermuda, as administrator.⁶⁵ Citi Hedge had a connection to FIM, as the chief operating officer of FIM Limited, Thomas Healy, was formerly with Hemisphere, a predecessor of Citi Hedge.⁶⁶ Citi Hedge's role in the Kingate Enterprise was to review and verify the purported trading information obtained from BLMIS, including in customer statements and trade confirmations,⁶⁷ and calculate the Kingate Funds' net asset value ("NAV")⁶⁸ based on that information.⁶⁹

Ceretti and Grosso deposited a portion of the Transfers for their own and their family members' personal benefit into their respective Trusts, each formed in Jersey.⁷⁰ Ceretti and Grosso formed their respective Shell Companies, which they also controlled and, as to the

⁶² Compl. ¶¶ 79-80.

⁶³ See, e.g., *Picard v. HSBC Bank PLC*, Adv. Pro. No. 09-01364 (SMB) (Bankr. S.D.N.Y.); *Picard v. Primeo Fund*, Adv. Pro. No. 09-01366 (SMB) (Bankr. S.D.N.Y.); *Picard v. Herald Fund SPC*, Adv. Pro. No. 09-01359 (SMB) (Bankr. S.D.N.Y.)

⁶⁴ Compl. ¶¶ 80, 242-44.

⁶⁵ Compl. ¶¶ 72-73.

⁶⁶ Compl. ¶ 144. Hemisphere was the administrator in 2000, and at that time was wholly owned by Mutual Risk Management Ltd., a public company listed on the New York Stock Exchange. See Mut. Risk Mgmt. Ltd., Annual Report (Form 10-K/A) (Apr. 27, 2000). This document is publicly available at <http://www.sec.gov/edgar/searchedgar/companysearch.html> (search "Mutual Risk Management Ltd.;" the document is available under the header "Filings" of "10K/A" and header "Filing Date" of "2000-04-27"), and is properly subject to judicial notice. See *supra* notes 13, 27, 58. The ownership of Hemisphere by Mutual Risk Management Ltd. also is reflected in the Information Memoranda. Compl. ¶ 47.

⁶⁷ Compl. ¶¶ 6, 144, 161.

⁶⁸ The Kingate Funds' Information Memoranda to prospective investors defined, in relevant part, the Kingate Funds' NAV as generally "equal to the Fund's assets less the Fund's liabilities and any accrued but unpaid expenses and reasonable reserves that have not yet been charged. Expenses, fees and other liabilities will be determined in accordance with U.S. Generally Accepted Accounting Principles. The Net Asset Value will be calculated as of the close of business in New York on the last Business Day of each month or on such other date when such computation is necessary or appropriate. . . ." Compl. ¶ 47 (May 1, 2000 Kingate Global Info. Mem. "Net Asset Value" at KGFSAD0001774-75; May 1, 2000 Kingate Euro Info. Mem. "Net Asset Value" at KGFSAD0000944; see also *id.* 143-44.

⁶⁹ Compl. ¶ 144.

⁷⁰ Compl. ¶¶ 54, 59-61, 63, 67-68, 71.

Trusts, the Investment Shells, and the Holding Companies, beneficially owned.⁷¹ The Trusts, together with the Trustees,⁷² and the other Shell Companies were key components of the Kingate Enterprise, receiving portions of the Transfers from KML,⁷³ and enabling Ceretti and Grosso to shield the Transfers they received from the reach of their and their respective family members' creditors.

The Transferee Defendants each played a role in maintaining the flow of funds to and from BLMIS, enriching themselves in the process.⁷⁴

B. BLMIS Performed Investment Adviser, Investment Custodian, and Broker/Dealer Functions for the Kingate Enterprise That Were Governed by U.S. Law.

The Kingate Funds' sole business was investing with BLMIS's IA Business in New York.⁷⁵ Despite having a registered address in the BVI, the Kingate Funds had no physical offices, no employees, and transacted no meaningful business there. To do business with BLMIS, KML and the Kingate Funds each signed and delivered to BLMIS certain agreements authorizing BLMIS to invest for the Kingate Funds.⁷⁶ Each of the Kingate Funds filed a customer claim with the Trustee based on that customer relationship.⁷⁷ The agreements between the Kingate Funds and BLMIS were expressly subject to U.S. law, and disputes under them had to be resolved in the U.S.⁷⁸ Pursuant to the agreements, KML and the Kingate Funds delegated

⁷¹ Compl. ¶¶ 54, 61, 63, 69-71.

⁷² The Ashby Trust's trustee, First Peninsula Trustees Limited, was formed in Liberia. Compl. ¶ 66. El Prael Trust's trustee, Alpine Trustees Limited and Port of Hercules Trustees Limited, were formed in Liberia and the BVI, respectively. Compl. ¶¶ 57-58.

⁷³ Compl. ¶¶ 59-61, 63, 67-68, 70-71, 86.

⁷⁴ See *supra* note 38.

⁷⁵ Compl. ¶¶ 93, 96.

⁷⁶ The Kingate Funds each opened an account with BLMIS in New York and signed and delivered to BLMIS in New York a Customer Agreement, Option Agreement, and Trading Authorization Limited to Purchases and Sales of Securities and Options. Compl. ¶¶ 39, 41.

⁷⁷ Claim Nos. 15359 and 15358. Compl. ¶ 90.

⁷⁸ The Kingate Funds' Customer Agreements provided that all transactions in the Customer's Account must be subject "(a) to the provisions of (1) the Securities Exchange Act of 1934, . . . and (2) the Commodities Exchange Act; . . . and (b) to the rules and regulations of (1) the Securities and Exchange Commission, (2) the Board of

investment management and custody of the Kingate Funds' investment assets to BLMIS.⁷⁹

BLMIS served as the Kingate Funds' agent⁸⁰ to take custody of the Kingate Funds' subscription

Governors of the Federal Reserve System and (3) the Commodities Futures Trading Commission," thereby contractually accepting the application of U.S. law to govern their commercial activities. *See* Compl. ¶¶ 39 (Kingate Global Customer Agreement "Applicable Rules and Regulations" at KGFSAC0000638), 41 (Kingate Euro Customer Agreement "Applicable Rules and Regulations" at FADSC0008884). The Customer Agreements also provided that any controversies between BLMIS and the Kingate Funds must be determined by arbitration under the Federal Arbitration Act, to be conducted in the U.S. "before the American Arbitration Association, or before the New York Stock Exchange, Inc., or an arbitration facility provided by any other exchange of which the broker is a member, or the National Association of Securities Dealers, Inc. or the municipal securities rule making board and in accordance with the rules obtaining of the selected organization." Compl. ¶¶ 39 (Kingate Global Customer Agreement "Arbitration" at KGFSAC0000640), 41 (Kingate Euro Customer Agreement "Arbitration" at FADSC0008886).

⁷⁹ Compl. ¶ 47 (May 1, 2000 Kingate Global Info. Mem. "Dependence on the Investment Advisor" at KGFSAD0001788 ("[A]ll investment management duties with regard to [Kingate Global's assets] [are delegated] to the Investment Advisor [i.e., BLMIS]"), "Possibility of Fraud or Misappropriation" at KGFSAD0001793 ("Neither the Fund nor the Custodian [i.e., HSBC] have actual custody of the assets," and "[s]uch actual custody rests with the Investment Advisor and its affiliated broker-dealer."); May 1, 2000 Kingate Euro Info. Mem. "Dependence on the Investment Advisor" at KGFSAD0000957 ("[A]ll investment management duties with regard to [Kingate Euro's assets] [are delegated] to the Investment Advisor [i.e., BLMIS]"), "Possibility of Fraud or Misappropriation" KGFSAD0000961 ("The Fund will not have actual custody of the assets. Such actual custody rests with the Investment Advisor . . ."). The Management Agreement between Kingate Global and KML dated January 1, 2006 also provided that "the Manager has delegated responsibilities as follows . . . To Madoff, investment advisory activities and custody services . . ." Compl. ¶ 114 (Kingate Global Mgmt. Agreement dated Jan. 1, 2006 5.9(d) at KGFSAA0000238). That agreement provided that, "As of the date hereof, custody of substantially all of the Fund's assets is in custody with Bernard Madoff Investment Securities LLC, a New York financial institution ('Madoff'). The Manager has no custody of any of the Fund's assets." *Id.* (Kingate Global Mgmt. Agreement dated Jan. 1, 2006 2.2 at KGFSAA0000231). Likewise, the Kingate Euro Manager Agreement dated May 1, 2000 provided that "It is expected that investment management functions . . . will be assigned and delegated to Bernard L. Madoff Investment Securities, a New York based NASD registered broker-dealer," and that, "[u]pon a proper delegation, the Manager shall be relieved of any responsibility for the acts or omissions of such delegate." Compl. ¶¶ 46, 106, 111, 114 (Kingate Euro Manager Agreement dated May 1, 2000 2.6 at KGFSAA0000246).

⁸⁰ The Kingate Funds' Trading Authorizations authorized BLMIS to act as the Kingate Funds' "agent and attorney-in-fact" (Compl. ¶¶ 39 (Kingate Global Trading Authorization Limited to Purchases and Sales of Securities and Options at KGFSAC0000635), 41 (Kingate Euro Trading Authorization Limited to Purchases and Sales of Securities and Options at FADSAC0008881), and implement the Kingate Funds' investment strategy, as set forth in the Information Memoranda (Compl. ¶ 47). Moreover, the Kingate Funds' Information Memoranda clearly stated that the Investment Advisor, i.e., BLMIS would have unfettered control over investment and trading. Compl. ¶ 47 (May 1, 2006 Kingate Global Info. Mem. "Dependence on the Investment Advisor" at KGFSAD0001710 ("Neither the Manager nor USD Shareholders have any control over the investment and trading decisions of the Investment Advisor, and no person should invest in the Fund unless willing to entrust all aspects of the investment management of the Fund to the selected Investment Advisor . . ."); May 1, 2006 Kingate Euro Info. Mem. "Dependence on the Investment Advisor" at KGFSAD0001006 ("Neither the Manager nor the Shareholders have any control over the investment and trading decisions of the Investment Advisor, and no person should invest in the Fund unless willing to entrust all aspects of the investment management of the Fund to the selected Investment Advisor . . ."). Ceretti and Grosso controlled the Shell Companies (Compl. ¶¶ 54-71) and controlled KML and the subsequent transfers of BLMIS customer property KML made to FIM, the Service Providers, and the Shell companies. *See infra* at 7-9; *see also supra* note 38. The subscribers in the Kingate Funds were put on notice that BLMIS's control over investments could result in delayed or suspended redemptions. Compl. ¶ 47 (May 1, 2000 Kingate Global Info. Mem. "Redemptions" at KGFSAD0001805-06; May 1, 2000 Kingate Euro Info. Mem. "Redemptions" at KGFSAD0000973). Subsequent transfers to all of the Transferee Defendants were equally subject to such delays. Compl. ¶¶ 253-261.

money in New York,⁸¹ and to implement the split-strike conversion investment strategy in New York⁸² by purchasing U.S. securities traded exclusively on U.S. exchanges.⁸³ Each of the Transferee Defendants knew that BLMIS's investment strategy purportedly involved purchasing U.S. securities traded only on U.S. exchanges and that BLMIS in New York performed investment advisory, custody, and reporting services regarding the Kingate Funds' invested assets.⁸⁴

C. The Core of the Kingate Enterprise Was in New York.

⁸¹ Compl. ¶¶ 47, 88, 218. *See In re Maxwell Commc'n Corp.*, 186 B.R. 807, 817 (S.D.N.Y. 1995) (analyzing as a component event of the transaction *where* the parties entered into their related transactions).

⁸² Compl. ¶¶ 25-26.

⁸³ Compl. ¶¶ 25-26; *see also* ¶ 47 (May 1, 2006 Kingate Global Info. Mem. "The Investment Advisor" at KGFSAD0001719 ("The investment advisor is a New York based NASD registered broker-dealer . . . and has managed the assets of the Fund since its inception."); May 1, 2006 Kingate Euro Info. Mem. "The Investment Advisor" at KGFSAD0001015 (same); May 1, 2006 Kingate Global Info. Mem. "Investment Process" at KGFSAD0001707 (investment advisor utilizes a "'split-strike conversion' strategy" entailing the purchase and sale of S&P stocks and options); May 1, 2006 Kingate Euro Info. Mem. "Investment Process" at KGFSAD0001002 (same); Kingate Global May 1, 2006 Info. Mem. "Temporary Investments" at KGFSAD0001708 (investment advisor may invest in U.S. government securities); May 1, 2006 Kingate Euro Info. Mem. "Temporary Investments" at KGFSAD0001015 (same); May 1, 2006 Kingate Global Info. Mem. "Trading Strategies of the Investment Advisor" at KGFSAD0001710 ("The Fund is a single-advisor fund and the overall success of the Fund depends upon the ability of the Investment Advisor to be successful in its own strategy."); May 1, 2006 Kingate Euro Info. Mem. at KGFSAD0001006 (same)). As stated expressly in Kingate Global's Information Memoranda, the currency in which Kingate Global maintained its books, records, and financial statements and invested its assets was the U.S. dollar. While Kingate Euro's books and records relied on the Euro, its investments with BLMIS likewise were transacted in "U.S. dollar-denominated securities." *See supra* note 35.

⁸⁴ *See supra* notes 79-80. Ceretti, Grosso, KML, FIM, Citi Hedge, and HSBC all were aware of the contents of Information Memoranda and the management agreements. Ceretti and Grosso helped prepare the Information Memoranda. Compl. ¶¶ 47, 83, 86-87, 96. Ceretti and Grosso controlled their respective Shell Companies. *See supra* note 71. The Information Memoranda incorporated referenced agreements, including the Management Agreement. Compl. ¶ 47 (May 1, 2006 Kingate Global Info. Mem. "Summary" at KGFSAD0001694 (information memorandum "should be read in conjunction with . . . the documents and agreements referred to herein, all of which are available from the Administrator upon request); May 1, 2006 Kingate Euro Info. Mem. "Summary" at KGFSAD0000989 (same)); May 1, 2006 Kingate Global Info. Mem. at KGFSAD0001718 (referencing the Kingate Global Mgmt. Agreement dated Jan. 1, 2006); May 1, 2006 Kingate Euro Info. Mem. at KGFSAD0000990, KGFSAD0001014 (referencing the Kingate Euro Manager Agreement dated May 1, 2000). Moreover, the Management Agreement to which KML was a party, the Consulting Services Agreement to which FIM was a party, the Administration Agreement to which Citi Hedge was a party, and the Custodian Agreement to which HSBC was a party all expressly incorporated and were subject to the Information Memoranda. *See, e.g.*, Compl. ¶ 114 (Kingate Global Mgmt. Agreement dated Jan. 1, 2006 4.2 at KGFSAA0000232 (shares offered at price and on terms and conditions set forth in Information Memorandum), 4.4 at KGFSAA0000232 ("The Manager shall deliver, or arrange for the delivery by any authorized dealer selected by the Manager, to each person to whom Shares are offered a copy of the Fund's most recently published Information Memorandum . . .")); Compl. ¶ 112 (April 23, 2001 Distribution Agreement between KML and FIM Limited relating to Kingate Euro dated April 23, 2001 1 at KGFSAC0000730); Compl. ¶ 73 (Administration Agreement between Kingate Euro, KML, and Hemisphere Management Limited dated May 1, 2000 at KGFSAC0000173); Compl. ¶ 80 (Custodian Agreement between Kingate Euro and HSBC dated May 1, 2000 "Interpretation" at FADSBB0000004).

Tremont Limited, the co-manager with KML of Kingate Global for approximately 10 years,⁸⁵ was formed in Bermuda, but was itself managed from New York⁸⁶ by employees of Tremont Partners, Inc., a related Connecticut corporation registered with the SEC under the Investment Advisers Act of 1940.⁸⁷ Tremont Limited's and Tremont Partners, Inc.'s parent company was Tremont Group Holdings, Inc., a Delaware corporation.⁸⁸ Michael Tannenbaum, Esq., with the New York law firm of Tannenbaum Helpert, was one of KML's directors located in New York.⁸⁹ Mr. Tannenbaum actively performed executive functions for KML, such as signing on behalf of KML the co-manager agreement entered into among KML, Tremont Limited, and Kingate Global.⁹⁰ Suzanne Hammond, based in New York, signed the co-manager agreement on Tremont Limited's behalf.⁹¹ During Tremont Limited's tenure as co-manager of Kingate Global, and thereafter while it continued to introduce investors to the Kingate Funds in return for a fee, it was a valuable contributor in New York to the success of the Kingate Enterprise.

KML performed its management role for the Kingate Funds in consultation with the FIM Entities.⁹² KML appointed BLMIS as KML's agent, giving KML itself a presence in New York.⁹³ Although FIM had a London address, Eric Lazear, FIM's head of due diligence for

⁸⁵ Compl. ¶¶ 106, 113.

⁸⁶ See *Picard v. Tremont Group Holdings, Inc.*, Adv. Pro. No. 10-05310 (BRL) (Bankr. S.D.N.Y.) (Doc. 4 ¶ 1).

⁸⁷ See *Tremont*, Adv. Pro. No. 10-05310 (Doc. 4 ¶¶ 47-51).

⁸⁸ See *Tremont*, Adv. Pro. No. 10-05310 (Doc. 4 at 21-22 & ¶ 46).

⁸⁹ The Kingate Funds' Information Memoranda list Michael Tannenbaum as a director of KML. Compl. ¶ 47 (May 1, 2000 Kingate Global Info. Mem. "The Co-Managers" at KGFSAD0001796; May 1, 2000 Kingate Euro Info. Mem. "Management" at KGFSAD0000965).

⁹⁰ Compl. ¶¶ 106, 113-14 (Co-Manager Agreement between KML and Kingate Global dated July 1, 2004 at KGFSAC0000676).

⁹¹ Compl. ¶¶ 106, 114 (Co-Manager Agreement between Tremont Limited and Kingate Global dated July 1, 2004 at KGFSAA0000365).

⁹² Compl. ¶¶ 84, 85, 110.

⁹³ Compl. ¶¶ 46-47. Cf. *Cutco Indus., Inc. v. Naughton*, 806 F.2d 361 (2d Cir. 1986) (an agent's jurisdictional contacts are attributable to a principal for personal jurisdiction purposes); *Daynard v. Ness, Motley, Loadholt, Richardson & Poole, P.A.*, 290 F.3d 42, 55 (1st Cir. 2002) (same). BLMIS's appointment as KML's agent was

feeder fund investments, such as the Kingate Funds' investments with BLMIS, was located in New York working with FIM (USA)⁹⁴ at its principal place of business in New York.⁹⁵ In addition to being the hub for FIM's feeder fund due diligence, FIM (USA) performed monitoring, research, and investor solicitation services for the Kingate Funds.⁹⁶ FIM (USA) was part of the FIM family of companies,⁹⁷ and part of the Kingate Enterprise in New York performing services for KML and the Kingate Funds.⁹⁸ Ceretti, Grosso, KML, and the FIM Entities actively participated in the Kingate Funds' business with BLMIS.⁹⁹ In addition to the services that FIM (USA) performed, Ceretti, Grosso, KML, and FIM reviewed and verified BLMIS customer statements and trade confirmations reflecting BLMIS's purported investment performance in domestic securities for the Kingate Funds' investments in New York.¹⁰⁰ Ceretti and Grosso, who were part of Madoff's inner circle,¹⁰¹ met regularly with Madoff in New York and communicated with BLMIS by phone to carry out the business of the Kingate Enterprise.¹⁰² During those meetings and telephone calls, Ceretti, Grosso, and Madoff discussed BLMIS's performance for the Kingate Funds and Madoff's strategy.¹⁰³

reflected, for example, in Kingate Global's May 1, 2000 Information Memorandum ("Dependence on the Investment Advisor" at KGFSAD0001788 (stating that "[KML and Tremont Limited] have delegated all investment management duties with regard to [Kingate Global's assets] to the Investment Advisor [(i.e., BLMIS)])). Compl. ¶ 47; *see also* Compl. ¶ 114 (Kingate Global Management Agreement dated Jan. 1, 2006 5.9(d) at KGFSAA0000238 (stating that KML has delegated "[t]o Madoff" responsibilities for "investment advisory activities and custody services"))).

⁹⁴ Compl. ¶¶ 84, 132-34.

⁹⁵ Compl. ¶ 37.

⁹⁶ Compl. ¶¶ 84-85, 124.

⁹⁷ Compl. ¶¶ 37, 84-85. Ex. B to Zeballos Decl. (FIM Limited Report and Financial Statements (Dec. 31, 2007) at 15).

⁹⁸ Compl. ¶¶ 37, 84-85, 123, 132-34.

⁹⁹ Compl. ¶¶ 6-7, 47, 51-52, 84-85, 96, 98-103, 106, 110-12, 115-18, 146, 166, 170-71, 184.

¹⁰⁰ Compl. ¶¶ 6, 24, 141, 146, 166, 170-71, 184.

¹⁰¹ Compl. ¶ 98.

¹⁰² Compl. ¶¶ 87, 99-101. Moreover, all of the Transferee Defendants and/or their agents communicated directly with BLMIS in New York or with FIM (USA) in New York. Compl. ¶ 83.

¹⁰³ Compl. ¶¶ 87, 99. Grosso also participated in over 200 phone calls with Jonathan Greenberg of Cohmad Securities Corp., an entity that was co-owned by Madoff in New York and that, like the Kingate Funds, referred billions of dollars in investments to BLMIS. Compl. ¶ 103. Grosso's contacts with Madoff-owned Cohmad in New

Citi Hedge,¹⁰⁴ well-known to Ceretti and Grosso, was brought into the Kingate Enterprise through agreements with KML and the Kingate Funds.¹⁰⁵ Citi Hedge's founder was the president and a director of KML at the time.¹⁰⁶ Citi Hedge was the Kingate Funds' agent.¹⁰⁷ KML also engaged HSBC, which is a major international financial institution doing business in the U.S.¹⁰⁸ In its role as the Kingate Funds' custodian, HSBC consistently used New York banks in carrying out its duties for KML and the Kingate Funds¹⁰⁹ relating to investments with BLMIS.¹¹⁰ Representatives of HSBC conducted due diligence on BLMIS's IA Business in New York that facilitated the success of the Kingate Enterprise.¹¹¹

D. In Economic Reality, the Transfers Resulted From the Kingate Enterprise's Relationship With BLMIS in New York.

The labyrinthine structure of the Kingate Enterprise, which Ceretti and Grosso created using entities formed in sometimes remote and non-transparent jurisdictions, does not change the fact that the economic base of the structure that gave rise to the Transfers was New York. BLMIS's performance of Madoff's investment strategy in U.S. securities was the attraction for

York provided Grosso with additional information about Madoff's investment strategy and other business arrangements he had.

¹⁰⁴ Citi Hedge is indirectly owned by Citigroup, Inc. and is affiliated with Citi Hedge Fund Services, Inc. Compl. ¶ 91; *Picard v. Ceretti, et al.*, Case No. 11-cv-07256 (S.D.N.Y.) (Doc. 4). Both Citigroup, Inc. and Citi Hedge Fund Services, Inc. are Delaware corporations registered to do, and doing, business in New York. Compl. ¶ 91; *Picard v. Ceretti, et al.*, Case No. 11-cv-07256 (S.D.N.Y.) (Doc. 4).

¹⁰⁵ Compl. ¶¶ 73-78.

¹⁰⁶ Compl. ¶¶ 73-78, 47 (May 1, 2000 Kingate Global Info. Mem. "Management" at KGFSAD0001795).

¹⁰⁷ Compl. ¶¶ 47, 73-78, 142-43.

¹⁰⁸ Compl. ¶¶ 79-80 (Custodian Agreement between Kingate Global, HSBC, and KML dated March 1, 1994 at FADSAC0060006, FADSAC0060020-21).

¹⁰⁹ See *Licci v. Lebanese Canadian Bank, SAL*, 732 F.3d 161, 168 (2d Cir. 2013) (for personal jurisdiction purposes, "complaints alleging a foreign bank's repeated use of a correspondent account in New York on behalf of a client—in effect, a 'course of dealing'—show purposeful availment of New York's dependable and transparent banking system, the dollar as a stable and fungible currency, and the predictable jurisdictional and commercial law of New York and the United States.") (quoting *Licci v. Lebanese Canadian Bank, SAL*, 20 N.Y.3d 327, 339 (2012)); see also *Picard v. Estate (Succession) of Igoi*, 525 B.R. 871, 885-86 (Bankr. S.D.N.Y. 2015) (same). In *Licci*, the "frequency and deliberate nature of [defendant's] use of its correspondent account" were "determinative" in the Court's finding that defendant purposefully availed itself "of the privilege of doing business in the New York forum." *Licci*, 732 F.3d at 168.

¹¹⁰ Compl. ¶¶ 88, 92.

¹¹¹ Compl. ¶¶ 80, 225.

subscribers to the Kingate Funds.¹¹² KML and FIM were compensated in fees, generally payable monthly, that were a percentage of the Kingate Funds' NAV invested with BLMIS in New York and that consisted of customer property taken from New York.¹¹³ Under KML's agreement with FIM,¹¹⁴ FIM did not charge the Kingate Funds a separate fee for the services rendered by FIM (USA) in New York, and FIM was paid a portion of the fee KML received from the Transfers.¹¹⁵

Citi Hedge received a portion of the Transfers in the form of fees that also represented a percentage of the Kingate Funds' NAV invested with BLMIS.¹¹⁶ Likewise, HSBC received a portion of the Transfers as compensation in fees based upon a percentage of the Kingate Funds' gross asset values with BLMIS in New York.¹¹⁷ The Transfers that KML, FIM, and the Service Providers received compensated them for the respective roles they played in the Kingate Enterprise's investment relationship with BLMIS.

The amount of KML's, FIM's, Citi Hedge's, or HSBC's fees was not determined by the scope or complexity of, or the time allotted to, the services they rendered. Even though FIM (USA) performed services in New York and the fee payments to FIM at FIM's direction were routinely routed directly or indirectly through a bank account in New York,¹¹⁸ the Transfers that KML, FIM, and the Service Providers received also were not dependent upon *where* the services

¹¹² Compl. ¶¶ 2, 47; *see supra* notes 83-84 (Information Memoranda and agreements describe BLMIS's performance of Madoff's investment strategy in U.S. securities for the Kingate Funds). The subscribers in the Kingate Funds, too, all were aware of the contents of the Information Memoranda, which were referenced in the subscription agreements accompanying the Information Memoranda. Compl. ¶ 47 (May 1, 2000 Kingate Global Info. Mem. enclosing Subscription Agreement at KGFSAD0001816 (The subscriber "acknowledges having received, reviewed and understood" the accompanying Information Memorandum.); May 1, 2000 Kingate Euro Info. Mem. accompanying Subscription Agreement at KGFSAD0000982 (same). Likewise, the subscribers were on notice of the agreements referenced in the Information Memoranda. *See supra* notes 83-84.

¹¹³ Compl. ¶¶ 8, 47 (May 1, 2000 Kingate Global Info. Mem. "Fees and Expenses" at KGFSAD0001800-01; May 1, 2000 Kingate Euro Info. Mem. "Fees and Expenses" at KGFSAD0000968-69), 107-10, 247-61.

¹¹⁴ Compl. ¶ 110.

¹¹⁵ Compl. ¶¶ 89, 110; *see also* Compl. 47 (May 1, 2000 Kingate Global Info. Mem. "Fees and Expenses" at KGFSAD0001800-01; May 1, 2000 Kingate Euro Info. Mem. "Fees and Expenses" at KGFSAD0000968-69).

¹¹⁶ Compl. ¶ 145.

¹¹⁷ Compl. ¶¶ 47 (May 1, 2000 Kingate Global Info. Mem. "Fees and Expenses" at KGFSAD0001800-01), 80, 245-46, 258.

¹¹⁸ Compl. ¶¶ 89.

were performed. The Transfers received by KML, FIM, Citi Hedge, and HSBC were directly based upon the Kingate Funds' assets under the management and in the custody of BLMIS in New York. The Transfers were created from and existed because of the Kingate Enterprise's relationship with BLMIS. And the Complaint alleges that but for the Transfers that money would have been part of BLMIS's customer property estate.¹¹⁹

As ultimate owners of KML and FIM, Ceretti and Grosso profited from the fees paid for the management and consultancy services performed for the Kingate Funds, whether in the form of dividends, draws, member remunerations, loans, repayment of capital, or other payments.¹²⁰ The Shell Companies and Ceretti and Grosso, through their ownership interests and as beneficiaries, would not have been enriched by the Transfers to the Shell Companies but for the Kingate Enterprise's exclusive business relationship with BLMIS. Ceretti's and Grosso's Trusts owned their respective Holding Companies and Investment Shells.¹²¹ No entity in the Kingate Enterprise acted independently from Ceretti and Grosso.¹²²

In sum, although Ceretti and Grosso reside abroad, and the corporate members of the Kingate Enterprise were incorporated or formed abroad, the Kingate Enterprise flourished for 14 years due to the component events that depended upon: BLMIS's New York IA Business; BLMIS's split strike conversion strategy that involved exclusively U.S. securities listed on U.S. exchanges and attracted billions of investment dollars into the Kingate Funds; BLMIS's

¹¹⁹ Compl. ¶¶ 8, 247-61, 317-321.

¹²⁰ Compl. ¶¶ 5, 45, 50-51, 54, 60, 63, 67-68, 110, 253-56; *see also, e.g.*, Ex. B to Zeballos Decl. (FIM Limited Report and Financial Statements (Dec. 31, 2007)). As owners of FIM Limited and members of FIM Advisers, Ceretti and Grosso were entitled to receive profit allocations. *See, e.g.*, Ex. B to Zeballos Decl. (FIM Limited Report and Financial Statements (Dec. 31, 2007)); Ex. A to Zeballos Decl. (FIM Limited Annual Return (July 9, 2007)).

¹²¹ Compl. ¶¶ 54, 59, 61, 63, 67, 71.

¹²² Compl. ¶¶ 5, 36-37, 45, 54, 59, 61, 63, 67, 69-73, 80, 131, 144, 225; Ex. B to Zeballos Decl. (FIM Limited Report and Financial Statements (Dec. 31, 2007)); Ex. C to Zeballos Decl. (FIM Advisers LLP's Report and Financial Statements (Dec. 31, 2007)); Ex. E to Zeballos Decl. (Certificate of Dissolution of FIM (USA) Inc., filed with the Delaware Secretary of State (June 8, 2009)).

management and custody of the Kingate Funds' assets in New York; BLMIS's initial transfers of customer property to the Kingate Funds, from which the Transfers to the Transferee Defendants were made; exclusive investments with BLMIS in U.S. dollars, necessitating a course of dealing with New York banks; BLMIS-issued customer statements and trade confirmations in New York that formed the basis for calculating the Kingate Funds' NAV and the fees, dividends, and other payments to the Transferee Defendants;¹²³ and operational, administrative, marketing, and due diligence services performed in New York. When BLMIS ceased operating, so did the Kingate Enterprise. The Transfers made to the Transferee Defendants were wholly dependent upon Madoff's Ponzi scheme and caused injury in New York by prolonging Madoff's fraud and reducing BLMIS's customer property estate.¹²⁴ The component events in this proceeding are domestic.

II. The Transferee Defendants Had Every Reason to Expect That They Would Be Subject to U.S. Law and Involved in Litigation in New York.

Compliance with U.S. law was expressly required under the Kingate Funds' Information Memoranda: "the Fund[s] and the Investment Advisor must comply with various legal requirements, including requirements imposed by the federal securities laws, tax laws, and pension laws."¹²⁵ The Information Memoranda also stated that Michael Tannenbaum, Esq., was legal counsel to the Kingate Funds, Tremont Limited, KML, and FIM on matters involving U.S. law.¹²⁶ In addition to being a director of KML, Mr. Tannenbaum also was a director of FIM

¹²³ Compl. ¶¶ 6, 144, 161.

¹²⁴ Compl. ¶ 331. *Cf. Igoia*, 525 B.R. at 885 (finding personal jurisdiction where conduct caused injury in New York).

¹²⁵ Compl. ¶ 47 (May 1, 2000 Kingate Global Info. Mem. "Changes in Applicable Law" at KGFSAD0001793; May 1, 2000 Kingate Euro Info. Mem. "Changes in Applicable Law" at KGFSAD0000962).

¹²⁶ Compl. ¶ 47 (May 1, 2000 Kingate Global Info. Mem. "Common Counsel" at KGFSAD0001794, "Potential Conflicts of Interest" at KGFSAD0001809, "Counsel" at KGFSAD0001811; May 1, 2000 Kingate Euro Info. Mem. "Common Counsel" at KGFSAD0000962, "Potential Conflicts of Interest" at KGFSAD0000975, "Counsel" at KGFSAD0000979).

(USA).¹²⁷ KML, FIM, Ceretti, and Grosso all were aware of the disclosures in the Information Memoranda.¹²⁸ And Ceretti and Grosso controlled the flow of BLMIS withdrawals through KML to Ceretti's and Grosso's respective Shell Companies.¹²⁹

KML's, FIM's, and the Service Providers' compensation resulted from the Kingate Enterprise's investments with BLMIS in New York, and the role KML, FIM, and the Service Providers played in the Enterprise.¹³⁰ The Kingate Funds' customer relationship with BLMIS was based upon agreements governed by U.S. law.¹³¹ The Transfers to Ceretti and Grosso and their Shell Companies also resulted from the Kingate Funds' customer relationship with BLMIS.¹³² For these reasons, the Transferee Defendants reasonably should have known that any disputes relating to the Transfers would be resolved in New York.

In fact, Ceretti, Grosso, KML, and Citi Hedge purposely availed themselves of U.S. and New York law¹³³ by seeking dismissal of state law securities fraud claims against them on the grounds that they were barred under the Securities Litigation Uniform Standards Act of 1998 ("SLUSA")¹³⁴ and that New York's Martin Act preempted those claims because a "substantial portion of the events giving rise to the claim[s]" occurred in New York.¹³⁵ Having invoked

¹²⁷ Ex. E to Zeballos Decl. (Certificate of Dissolution of FIM (USA) Inc., filed with the Delaware Secretary of State (June 8, 2009)).

¹²⁸ See *supra* note 84.

¹²⁹ See *infra* at 7-9; see also *supra* note 38.

¹³⁰ Compl. ¶¶ 4, 6, 8, 47, 110, 112, 121, 145, 161, 168, 247-61.

¹³¹ See *supra* note 78.

¹³² Compl. ¶¶ 8, 60, 68, 86, 254, 256.

¹³³ See *Igoi*, 525 B.R. at *885-87 (purposeful availment of New York and U.S. law may confer personal jurisdiction over defendants)

¹³⁴ Pub. L. No. 105-353, § 101, 112 Stat. 3227 (1998).

¹³⁵ *In re Kingate Mgmt. Ltd. Litig.*, No. 09-CV-5386 (DAB) (S.D.N.Y.) (Docs. 82 at 23-24, 97 at 21-22, 102 at 30-31, 111 at 25-27). The Defendants' invocation of U.S. and New York law is sufficient to deny their attempt here to evade its reach. In ruling on the motions to dismiss, Judge Batts accepted the Defendants' arguments and found that repleading the non-fraud claims would be futile because they would be preempted by the Martin Act. *Id.* (Doc. 173 at 24-30 (concluding that the nexus with New York required for Martin Act preemption was satisfied). Although the parties ultimately had agreed that Plaintiffs' claims were not preempted by the Martin Act, *In re Kingate Mgmt. Ltd. Litig.*, 784 F.3d 128, 154 & n.26 (2d Cir. 2015), the Second Circuit's ruling did not discuss, or reject, Judge Batts's findings that the transactions had a nexus with New York. *Id.* The Second Circuit remanded the case to the district

American law as entitling them to protection in connection with Madoff's Ponzi scheme, these Transferee Defendants cannot now be heard to argue that their transactions with Madoff are "extraterritorial" or that comity supports a dismissal. As discussed in this memorandum and based upon the legal authorities discussed in the Trustee's main brief, recovery of the Transfers is not barred by *Morrison* or the Extraterritoriality Decision.

Dated: June 26, 2015
New York, New York

/s/ David J. Sheehan
Baker & Hostetler LLP
45 Rockefeller Plaza
New York, New York 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201
David J. Sheehan
Email: dsheehan@bakerlaw.com
Geraldine E. Ponto
Email: gponto@bakerlaw.com
Marshall J. Mattera
Email: mmattera@bakerlaw.com

*Attorneys for Irving H. Picard, Trustee
for the Substantively Consolidated SIPA
Liquidation of Bernard L. Madoff Investment
Securities LLC and the estate of Bernard L.
Madoff*

Baker & Hostetler LLP

45 Rockefeller Plaza

New York, NY 10111

Telephone: (212) 589-4200

Facsimile: (212) 589-4201

*Attorneys for Irving H. Picard, Trustee for the
Substantively Consolidated SIPA Liquidation of
Bernard L. Madoff Investment Securities LLC and
the estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation of
Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

FEDERICO CERETTI, et al.,

Defendants.

No. 08-01789 (SMB)

SIPA LIQUIDATION
(Substantively Consolidated)

Adv. Pro. No. 09-01161 (SMB)

**DECLARATION OF GONZALO S. ZEBALLOS, ESQ. IN SUPPORT OF TRUSTEE'S
SUPPLEMENTAL MEMORANDUM OF LAW IN OPPOSITION TO CERTAIN
DEFENDANTS' MOTION TO DISMISS BASED ON EXTRATERRITORIALITY**

Gonzalo S. Zeballos, Esq. hereby declares as follows:

1. I am a member of the Bar of the State of New York and this Court, and a partner at Baker & Hostetler LLP, attorneys for the Trustee.

2. I am fully familiar with the facts set forth herein based either upon my own personal knowledge or information conveyed to me that I believe to be true. I make this Declaration to submit, for the Court's convenience and ease of reference, a true and correct copy of the following documents:

- A. Attached hereto as **Ex. A** is a true and correct copy of the Annual Return dated July 9, 2007 of FIM Limited.
- B. Attached hereto as **Ex. B** is a true and correct copy of the Report and Financial Statement dated December 31, 2007 of FIM Limited.
- C. Attached hereto as **Ex. C** is a true and correct copy of the Report and Financial Statement dated December 31, 2007 of FIM Advisers LLP.
- D. Attached hereto as **Ex. D** is a true and correct copy of the Report and Financial Statement dated December 31, 2008 of FIM Advisers LLP.
- E. Attached hereto as **Ex. E** is a true and correct copy of the Certificate of Dissolution of FIM (USA) Inc. dated June 8, 2009 filed with the Delaware Secretary of State.

Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury that the foregoing statements made by me are true and correct.

Dated: June 23, 2015
New York, New York

/s/ Gonzalo S. Zeballos
Gonzalo S. Zeballos

EXHIBIT A



363a_(ef)

Companies House

— for the record —

Annual Return

Company Name: **FIM LIMITED**

Company Number: **01536755**



Received for filing in Electronic Format on the: **09/07/2007**

XBTRMR38

Company Details

Period Ending: **30/06/2007**

Company Type: **PRIVATE COMPANY LIMITED BY SHARES**

Principal Business Activities:

SIC Codes
6523

Registered Office:
Address:

**20 ST JAMESS STREET
LONDON
SW1A 1ES**

Register of
Members Address:

**20 ST. JAMES'S STREET
LONDON
SW1A 1ES**

Register of Debenture
Holders Address:

Not Applicable

Details of Officers of the Company

Company Secretary:

Name: **MR THOMAS HEALY**

Address: **24 ST ANN'S TERRACE
ST. JOHN'S WOOD
LONDON NW8 6PJ**

Director 1:

Name: **MR FEDERICO CERETTI**
Date of Birth: **12/01/1961**
Nationality: **ITALIAN**
Occupation: **COMPANY DIRECTOR**

Address: **37 QUEENS GATE GARDENS
LONDON SW7 5RR**

Director 2:

Name: **MR CARLO GROSSO** *Address:* **22 CATHCART ROAD**
Date of Birth: **27/07/1944** **LONDON SW10 9NN**
Nationality: **ITALIAN**
Occupation: **COMPANY DIRECTOR**

Share Capital

Issued Share Capital Details:

<i>Class of share</i>	<i>Number of shares issued</i>	<i>Aggregate nominal value of issued shares</i>
ORDINARY	100000	GBP100000
TOTALS	100000	GBP100000

Full Details of Shareholders

The details below relate to individuals / corporate bodies that were shareholders as at 30/06/2007, or that had ceased to be shareholders since the made up date of the previous Annual Return.

Shareholding 1:

50000 ORDINARY Shares held as at 30/06/2007

Name: **FEDERICO CERETTI**
Address: **37 QUEENS GATE GARDENS**
LONDON SW7 5RR

Shareholding 2:

50000 ORDINARY Shares held as at 30/06/2007

Name: **CARLO GROSSO**
Address: **27 CATHCART ROAD**
LONDON SW10 9NN

Authorisation

Authoriser Designation: **SECRETARY** *Date Authorised:* **09/07/2007** *Authenticated:* **Yes (E/W)**

EXHIBIT B

FIM Limited

Report and Financial Statements

31 December 2007

1536755

WEDNESDAY



"LKOZ7199"

LD4

09/07/2008

87

COMPANIES HOUSE

FIM Limited

Registered No 1536755

Directors

C Grosso

F Ceretti

Secretary

T Healy

Auditors

Ernst & Young LLP
1 More London Place
London SE1 2AF

Bankers

HSBC Bank PLC
69 Pall Mall
London SW1Y 5EY

Legal Advisors

Simmons & Simmons
CityPoint
One Ropemaker Street
London EC2Y 9SS

Registered Office

20 St James's Street
London SW1A 1ES

FIM Limited

Directors' report

The directors present their annual report and the financial statements of the group for the year ended 31 December 2007

Principal activity and review of the business

The principal activity of the group is the provision of investment services FIM Advisers LLP (the "LLP") is regulated by the Financial Services Authority

Principal risks and uncertainties

In assessing its principal risks and uncertainties, the group has considered their potential impact, their likelihood, what controls it has in place and what steps it can take to mitigate such risks The group's principal risks and uncertainties can be broadly grouped as - operational, business and financial/credit risk

Operational Risk

The group has appropriate controls in place to manage its operational risk, including the loss of key staff, system failures, fraud/theft, failure to comply with taxation requirements and breach of regulatory rules and other legislation.

Business Risk

The group faces a number of potential business risks, including the loss of key advisory/management mandates, poor investment performance and changes in the regulatory environment

Financial/Credit Risk

Whilst the group believes this risk to be minimal, it manages its business to limit undue client/counterparty exposure and ensure sufficient working capital exists

Future developments

The group has no plans that will significantly change the nature of its activities

Results and dividends

Retained profit for the year amounted to £2,228,353 (2006 £4,851,066)

No dividends were paid during the current year or prior year The directors do not recommend the payment of a final dividend and the profit for the year is to be transferred to reserves

Shareholders' funds increased from £8,887,052 at 31 December 2006 to £11,173,568 at 31 December 2007.

Directors

The directors in office during the year and as at the date of this report were as follows

C Grosso
F Ceretti

Charitable contributions

During the year, the company made charitable contributions totalling £59,000 (2006 £54,000)

Auditors

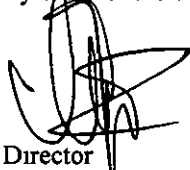
A resolution to reappoint Ernst & Young LLP as auditors will be put to the members at the Annual General Meeting So far as the directors are aware, there is no relevant audit information of which the group's auditors are unaware The directors have taken all steps that they ought to have taken as directors

FIM Limited

Directors' report

in order to make themselves aware of any relevant audit information and to establish that the auditors are aware of this information

By order of the board



Director

1 July 2008

FIM Limited

Statement of directors' responsibilities in respect of the financial statements

The directors are responsible for preparing the annual report and the financial statements in accordance with applicable United Kingdom law and United Kingdom Generally Accepted Accounting Practice.

Company law requires the directors to prepare financial statements for each financial year which give a true and fair view of the state of affairs of the company and of the group and of the profit or loss of the group for that period. In preparing those financial statements, the directors are required to

- select suitable accounting policies and then apply them consistently,
- make judgements and estimates that are reasonable and prudent, and
- prepare the financial statements on the going concern basis unless it is inappropriate to presume that the company will continue in business

The directors are responsible for keeping proper accounting records which disclose with reasonable accuracy at any time the financial position of the group and to enable them to ensure that the financial statements comply with the Companies Act 1985. They are also responsible for safeguarding the assets of the group and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

Independent auditors' report

to the members of FIM Limited

We have audited the group and parent company financial statements (the "financial statements") of FIM Limited for the year ended 31 December 2007 which comprise the Group Profit and Loss Account, the Group Statement of Total Recognised Gains and Losses, the Group and Company Balance Sheets, the Group Cash Flow Statement and the related notes 1 to 19. These financial statements have been prepared under the accounting policies set out therein.

This report is made solely to the company's members, as a body, in accordance with Section 235 of the Companies Act 1985. Our audit work has been undertaken so that we might state to the company's members those matters we are required to state to them in an auditors' report and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the company and the company's members as a body, for our audit work, for this report, or for the opinions we have formed.

Respective responsibilities of directors and auditors

The directors' responsibilities for preparing the Annual Report and the financial statements in accordance with applicable United Kingdom law and Accounting Standards (United Kingdom Generally Accepted Accounting Practice) are set out in the Statement of Directors' Responsibilities.

Our responsibility is to audit the financial statements in accordance with relevant legal and regulatory requirements and International Standards on Auditing (UK and Ireland).

We report to you our opinion as to whether the financial statements give a true and fair view and are properly prepared in accordance with the Companies Act 1985. We also report to you whether in our opinion the information given in the directors' report is consistent with the financial statements.

In addition we report to you if, in our opinion, the company has not kept proper accounting records, if we have not received all the information and explanations we require for our audit, or if information specified by law regarding directors' remuneration and other transactions is not disclosed.

We read the directors' report and consider the implications for our report if we become aware of any apparent misstatements within it.

Basis of audit opinion

We conducted our audit in accordance with International Standards on Auditing (UK and Ireland) issued by the Auditing Practices Board. An audit includes examination, on a test basis, of evidence relevant to the amounts and disclosures in the financial statements. It also includes an assessment of the significant estimates and judgments made by the directors in the preparation of the financial statements, and of whether the accounting policies are appropriate to the group's and company's circumstances, consistently applied and adequately disclosed.

We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or other irregularity or error. In forming our opinion we also evaluated the overall adequacy of the presentation of information in the financial statements.

Independent auditors' report

to the members of FIM Limited (continued)

Opinion

In our opinion

- the financial statements give a true and fair view, in accordance with United Kingdom Generally Accepted Accounting Practice, of the state of the group's and the parent company's affairs as at 31 December 2007 and of the group's profit for the year then ended,
- the financial statements have been properly prepared in accordance with the Companies Act 1985, and
- the information given in the directors' report is consistent with the financial statements

Ernst & Young LLP
Ernst & Young LLP
Registered Auditor
London

7 July 2008

FIM Limited

Group profit and loss account

for the year ended 31 December 2007

	Notes	2007 £	2006 £
Income	2	27,284,025	17,068,464
Administrative expenses		(12,605,458)	(8,977,486)
Operating profit	3	14,678,567	8,090,978
Interest receivable	4	200,646	198,814
Profit on ordinary activities before taxation		14,879,213	8,289,792
Tax (charge)/credit on profit on ordinary activities	6	(160,736)	4,490
Profit on ordinary activities after taxation		14,718,477	8,294,282
Distributions to minority interests		(12,490,124)	(3,443,216)
Retained profit for the financial year		2,228,353	4,851,066

All amounts are in respect of continuing activities

Group statement of total recognised gains and losses

for the year ended 31 December 2007

	2007 £	2006 £
Profit for the financial year	2,228,353	4,851,066
Exchange difference on retranslation of net assets of subsidiary undertakings	58,163	(158,259)
Total recognised gains and losses	2,286,516	4,692,807

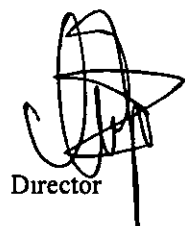
FIM Limited

Group balance sheet

at 31 December 2007

	Notes	2007 £	2006 £
Fixed assets			
Tangible assets	7	377,430	347,599
Investments	8	51	51
		<u>377,481</u>	<u>347,650</u>
Current assets			
Debtors	9	9,755,032	5,998,955
Cash		6,782,275	6,413,825
		<u>16,537,307</u>	<u>12,412,780</u>
Creditors: amounts falling due within one year	10	(5,668,347)	(3,750,672)
Net current assets		<u>10,868,960</u>	<u>8,662,108</u>
Total assets less current liabilities		<u>11,246,441</u>	<u>9,009,758</u>
Creditors amounts falling due after more than one year	11	(36,873)	(87,706)
Minority interests		(36,000)	(35,000)
Net assets		<u><u>11,173,568</u></u>	<u><u>8,887,052</u></u>
Capital and reserves			
Share capital	13	100,000	100,000
Other reserves	14	(106,684)	(164,847)
Profit and loss account	14	11,180,252	8,951,899
Shareholders' funds		<u><u>11,173,568</u></u>	<u><u>8,887,052</u></u>

Signed on behalf of the Board



Director

1 July 2008

FIM Limited

Company balance sheet

at 31 December 2007

	Notes	2007 £	2006 £
Fixed assets			
Tangible assets	7	257,538	308,685
Investments	8	1,274,000	1,274,000
		<u>1,531,538</u>	<u>1,582,685</u>
Current assets			
Debtors	9	1,198,474	1,063,288
Cash		498,363	320,167
		<u>1,696,837</u>	<u>1,383,455</u>
Creditors: amounts falling due within one year	10	(1,360,299)	(1,024,015)
Net current assets		<u>336,538</u>	<u>359,440</u>
Total assets less current liabilities		1,868,076	1,942,125
Creditors: amounts falling due after more than one year	11	(36,873)	(87,706)
Net assets		<u>1,831,203</u>	<u>1,854,419</u>
Capital and reserves			
Share capital	13	100,000	100,000
Profit and loss account	14	1,731,203	1,754,419
Shareholders' funds		<u>1,831,203</u>	<u>1,854,419</u>

Signed on behalf of the Board



Director

1 July 2008

FIM Limited

Group statement of cash flows

for the year ended 31 December 2007

	Notes	2007 £	2006 £
Cash inflow from operating activities	15(a)	12,109,147	5,624,243
Returns on investments and servicing of finance	15(b)	(11,471,346)	(2,946,802)
Taxation	15(b)	(51,093)	(210,730)
Capital expenditure	15(b)	(218,258)	(265,575)
Increase in cash in the year		<u>368,450</u>	<u>2,201,136</u>

Reconciliation of net cash flow to movement in net funds

	Notes	2007 £	2006 £
Increase in cash in the year and change in net funds resulting from cash flows	15(c)	<u>368,450</u>	<u>2,201,136</u>
Movement in net funds in the year		368,450	2,201,136
Net funds at 1 January 2007	15(c)	<u>6,413,825</u>	<u>4,212,689</u>
Net funds at 31 December 2007	15(c)	<u>6,782,275</u>	<u>6,413,825</u>

Notes to the financial statements

at 31 December 2007

1. Accounting policies

The financial statements have been prepared under the historical cost convention and in accordance with applicable accounting standards

Basis of consolidation

The group accounts consolidate the results of the company and its subsidiaries, disclosed in note 8, for the year ended 31 December 2007. The company is not required to present a separate profit and loss account as permitted by section 230 of the Companies Act 1985

Depreciation of tangible fixed assets

Depreciation is provided at the following annual rates in order to write off each asset over its useful life

Leasehold improvements	Over life of lease
Office equipment	50% on cost
Furniture and fittings	25% on cost
Computer software	33% on cost

Investment in subsidiary undertakings

Shares in subsidiary undertakings are stated at cost less provision for any permanent diminution in value

Other investments

Other investments are unlisted investments in funds included at cost and restated at the balance sheet date rate of exchange where acquired in foreign currency. Where a deficit to cost is thought to be a permanent diminution, it is taken to the profit and loss account

Minority interest

Minority interest in the consolidated balance sheet represents the capital contributions in FIM Advisers LLP of members other than FIM Limited. Minority interests in the consolidated profit and loss account represents the share of profit of FIM Advisers LLP attributable to the members other than FIM Limited. Profit allocations from FIM Advisers LLP are governed by the Limited Liability Partnership Agreement dated 29 July 2005 and the amendments within the supplemental deed dated 28 April 2006

Foreign currencies

Assets and liabilities in foreign currencies are translated into sterling at the rates of exchange ruling at the balance sheet date. Transactions in foreign currencies are translated into sterling at the rate of exchange ruling at the date of the transaction. Exchange differences are taken into the profit and loss account for the year. Exchange differences on the translation of the opening balances of subsidiaries are taken to reserves

Operating lease commitments

Lease payments under operating leases, where substantially all the risks and benefits remain with the lessor, are charged as expenses in the periods in which they are incurred

Taxation and deferred taxation

Provision is made for corporation tax at the current rates on the excess of taxable income over allowable expenses. Provision is made for deferred tax on all material timing differences arising from the different treatment of items for accounting and tax purposes. A deferred tax asset is recognised only to the extent that it is more likely than not that there will be taxable profits in the future against which the asset can be offset

FIM Limited

Notes to the financial statements

at 31 December 2007

2. Income

All income is stated net of VAT and relates to one continuing activity being the supply of investment services to clients based in the United Kingdom, Europe and the Americas. Income is recognised on a receivable basis.

3. Operating profit

	2007 £	2006 £
Operating profit is stated after charging		
Depreciation of fixed assets	188,931	155,020
Auditors' remuneration		
Audit services	78,824	60,466
Other services in relation to taxation	193,148	138,786
Operating lease rentals – land and buildings	532,759	516,063
(Gain)/loss on foreign currencies	(75,773)	31,588

4. Interest receivable

	2007 £	2006 £
Interest received and receivable		
Bank interest	200,646	198,814

5. Staff costs and Directors' emoluments

	2007 £	2006 £
Staff costs		
Wages and salaries	3,716,674	2,763,646
Social security costs	214,619	313,821
Pension	3,979	878
	3,935,272	3,078,344

	2007 No	2006 No
The average number of employees during the year was made up as follows		
Management	3	3
Investment	15	16
Administration	17	13
Marketing	5	6
	40	38

	2007 £	2006 £
Directors' emoluments	–	–

The highest paid director was paid £0 (2006 - £nil)

The directors are also Members of FIM Advisers LLP, and receive a profit allocation from that entity

FIM Limited

Notes to the financial statements

at 31 December 2007

6. Tax on profit on ordinary activities

(a) Analysis of tax (credit)/charge for the year

	2007	2006
	£	£
UK Corporation tax		
Current year	29,135	23,318
Prior year	1,099	(32,551)
Foreign taxation	27,775	4,743
Provision for prior period tax	102,727	–
Total current tax – note 6(b)	160,736	(4,490)
Deferred tax (see note 12)	–	–
	160,736	(4,490)

(b) Factors affecting tax charge for year

	2007	2006
	£	£
Profit on ordinary activities before tax	14,879,213	8,289,792
Tax on profits from ordinary activities at 30% (2006 – 30%)	4,463,764	2,486,937
Effects of		
Marginal relief	(3,608)	(4,477)
Adjustments in respect of previous periods	1,099	(32,551)
Adjustments in respect of profits of FIM Advisers LLP not taxable within the group	(4,403,246)	(2,454,399)
Provision for prior period tax	102,727	–
Current tax (credit)/charge for year – note 6(a)	160,736	(4,490)

There is no unprovided deferred tax

FIM Limited

Notes to the financial statements

at 31 December 2007

7. Tangible fixed assets

Group

	<i>Leasehold improvements</i>	<i>Office equipment</i>	<i>Furniture and fittings</i>	<i>Computer software</i>	<i>Total</i>
	£	£	£	£	£
Cost					
At 1 January 2007	96,783	240,215	232,621	201,170	770,789
Additions	67,100	73,780	24,748	52,630	218,258
Disposals	–	(85,476)	(50,539)	–	(136,015)
Exchange adjustment	52	(92)	468	–	428
At 31 December 2007	163,935	228,427	207,298	253,800	853,460
Depreciation					
At 1 January 2007	33,606	203,821	153,335	32,428	423,190
Charge for year	23,921	49,669	34,939	80,402	188,931
Disposals	–	(84,348)	(51,667)	–	(136,015)
Exchange adjustment	61	(156)	19	–	(76)
At 31 December 2007	57,588	168,986	136,626	112,830	476,030
Net book value					
At 31 December 2007	106,347	59,441	70,672	140,970	377,430
At 31 December 2006	63,177	36,394	79,286	168,742	347,599

Company

	<i>Leasehold improvements</i>	<i>Office equipment</i>	<i>Furniture and fittings</i>	<i>Computer software</i>	<i>Total</i>
	£	£	£	£	£
Cost					
At 1 January 2007	78,558	257,083	166,804	201,170	703,615
Additions	–	58,303	–	52,629	110,932
Disposals	–	(85,476)	(50,539)	–	(136,015)
At 31 December 2007	78,558	229,910	116,265	253,799	678,532
Depreciation					
At 1 January 2007	31,106	217,284	114,112	32,428	394,930
Charge for year	16,145	37,614	27,918	80,402	162,079
Disposals	–	(84,348)	(51,667)	–	(136,015)
At 31 December 2007	47,251	170,550	90,363	112,830	420,994
Net book value					
At 31 December 2007	31,307	59,360	25,902	140,969	257,538
At 31 December 2006	47,452	39,799	52,692	168,742	308,685

FIM Limited

Notes to the financial statements

at 31 December 2007

8. Fixed asset investments

Group

	2007	2006
	£	£
Cost at 1 January	101	58
Additions	–	50
Exchange adjustments	–	(7)
	<u>101</u>	<u>101</u>

The investment by the group stated above relates to 100 shares of \$1 each in FIM Long–Invest PCC Limited, and 100 shares of \$1 each in FIM Long–Invest Plus PCC Limited, funds managed by FIM Management (Guernsey) Limited

Company

	2007	2006
	£	£
Cost at 1 January	1,274,000	1,280,982
Disposals	–	(7,030)
Exchange adjustments	–	48
	<u>1,274,000</u>	<u>1,274,000</u>
Investment in subsidiary	<u>1,274,000</u>	<u>1,274,000</u>

All the subsidiaries are consolidated They are

	<i>Country of Incorporation/ Registration</i>
FIM Advisers LLP	England and Wales
FIM Holdings Limited	England and Wales
FIM Management Limited	Bermuda
FIM Management (Guernsey) Limited	Guernsey
FIM (USA) Inc	USA

All the companies and the limited liability partnership are engaged in the provision of investment management and related services All of the above entities are wholly owned, except for FIM Advisers LLP to which the group has contributed 98.7% of the capital The interest in FIM Advisers LLP is owned directly by FIM Limited The other subsidiaries are held via this direct holding

On 7 April 2006, FIM International Limited, a non–trading subsidiary was wound up The group incurred a loss on disposal of £7,030

FIM Limited

Notes to the financial statements

at 31 December 2007

9. Debtors

	<i>Group</i> 2007 £	<i>Group</i> 2006 £	<i>Company</i> 2007 £	<i>Company</i> 2006 £
Amounts due from subsidiaries	–	–	786,173	679,122
Trade debtors	9,265,073	5,562,889	4,568	–
Other debtors	284,862	275,535	226,156	238,035
Prepayments and accrued income	205,097	160,531	181,577	146,131
	<u>9,755,032</u>	<u>5,998,955</u>	<u>1,198,474</u>	<u>1,063,288</u>

Included within other debtors is a rent deposit of £159,564 (2006 £166,899) which is due after more than one year

10. Creditors: amounts falling due within one year

	<i>Group</i> 2007 £	<i>Group</i> 2006 £	<i>Company</i> 2007 £	<i>Company</i> 2006 £
Trade creditors	2,104,173	164,543	101,185	158,989
Corporation tax	132,844	23,318	132,844	23,318
Other taxes and social security costs	64,768	149,917	55,287	137,334
Accruals and deferred income	1,802,091	2,130,743	1,070,983	704,374
Other creditors	1,564,471	1,282,151	–	–
	<u>5,668,347</u>	<u>3,750,672</u>	<u>1,360,299</u>	<u>1,024,015</u>

11. Creditors: amounts falling due after more than one year

Group and Company

	2007 £	2006 £
Other creditors	<u>36,873</u>	<u>87,706</u>

FIM Limited

Notes to the financial statements

at 31 December 2007

12. Deferred taxation

	2007 £	2006 £
Analysis of provision for deferred tax		
At 1 January	-	-
Movement in the year	-	-
Adjustments in relation to prior years	-	-
At 31 December	-	-

13. Share capital

Group and Company

	2007 <i>No</i>	Authorised 2006 <i>No</i>	Allotted, called up and fully paid 2007 £	2006 £
Equity interests				
100,000 ordinary shares of £1 each	100,000	100,000	100,000	100,000

14. Reconciliation of shareholders' funds and movement in reserves

Group

	Share capital £	Other reserves £	Profit and loss account £	Total shareholders' funds £
At 1 January 2007	100,000	(164,847)	8,951,899	8,887,052
Profit for the financial year	-	-	2,228,353	2,228,353
Gain on foreign currency translation	-	58,163	-	58,163
At 31 December 2007	100,000	(106,684)	11,180,252	11,173,568

FIM Limited

Notes to the financial statements

at 31 December 2007

14. Reconciliation of shareholders' funds and movement in reserves (continued)

<i>Company</i>	<i>Share capital</i>	<i>Profit and loss account</i>	<i>Total shareholders' funds</i>
	<i>£</i>	<i>£</i>	<i>£</i>
At 1 January 2007	100,000	1,754,419	1,854,419
Loss for the year	–	(23,216)	(23,216)
At 31 December 2007	100,000	1,731,203	1,831,203

15. Notes to statement of cash flows

(a) Cash flow statement

	<i>2007</i>	<i>2006</i>
	<i>£</i>	<i>£</i>
Reconciliation of operating profit to net cash outflow from operating activities:		
Operating profit	14,678,567	8,090,978
Depreciation	188,931	155,020
(Increase) in debtors	(3,756,077)	(1,692,589)
Increase/(Decrease) in creditors	1,015,841	(807,004)
Net (gain)/loss on foreign exchange	(75,773)	31,588
Exchange adjustment on retranslation of net assets of subsidiary undertakings	58,163	(158,259)
Exchange adjustment on fixed assets	(505)	4,509
Net cash inflow from operating activities	12,109,147	5,624,243

(b) Analysis of cash flows for headings netted in the cash flow statement

	<i>2007</i>	<i>2006</i>
	<i>£</i>	<i>£</i>
Returns on investments and servicing of finance		
Interest received	200,646	198,814
Distributions to minority interests	(11,672,992)	(3,154,616)
Contribution by minority interests	1,000	9,000
Net cash outflow from returns on investments and servicing of finance	(11,471,346)	(2,946,802)
Taxation	(51,093)	(210,730)
Capital expenditure		
Purchase of tangible fixed assets	(218,258)	(265,575)

FIM Limited

Notes to the financial statements

at 31 December 2007

15. Notes to statement of cash flows (continued)

(c) Analysis of net funds

	2006 £	Cash flow £	2007 £
Cash at bank and in hand	6,413,825	368,450	6,782,275

16. Future financial commitments

At the year end, the company was committed to making the following annual payments in respect of operating leases with expiry dates as follows

	<i>Land and buildings</i>	
	2007 £	2006 £
Within two to five years	305,000	305,000

17. Related party transactions

There have been no related party transactions with entities outside the group

18. Commitments

In order to hedge effectively against foreign currency transaction risks, the group has entered into a number of forward foreign currency contracts. At the year end, there were 5 open contracts to sell a total of US\$0 and €5,340,000 (2006 - US\$1,825,000 and €2,525,000) which expire during the succeeding accounting period

19. Ultimate controlling party

FIM Limited is jointly owned and controlled by C Grosso and F Ceretti

EXHIBIT C

FIM Advisers LLP

Report and Financial Statements

For the year ended 31 December 2007

THURSDAY



LGOBG40K

16/10/2008

COMPANIES HOUSE

LD3

30

FIM Advisers LLP

Registered No OC309543

Members

C Grosso
F Ceretti
FIM Limited
T Healy
G D'Oria
A Albright
B Robertson
M Jochems (appointed 1 September 2007)

Auditors

Ernst & Young LLP
1 More London Place
London SE1 2AF

Bankers

HSBC Plc
69 Pall Mall
London SW1Y 5EY

Solicitors

Simmons & Simmons
CityPoint
One Ropemaker Street
London EC2Y 9SS

Registered Office

20 St James's Street
London
SW1A 1ES

FIM Advisers LLP

Members' report

The Members present their report and financial statements for the year ended 31 December 2007

Principal activity and review of the business

The principal activity of FIM Advisers LLP (the "LLP") is the provision of investment services. The LLP is regulated by the Financial Services Authority.

Results and distributions

The results for the year are shown in the profit and loss account on page 6. The LLP's balance sheet as detailed on page 7 shows a satisfactory position with Members' interests amounting to £7,511,178 (2006 - £6,537,882).

Members' profit allocation

Profits are shared among the Members as decided by the Managing Member and governed by the Limited Liability Partnership Agreement dated 29 July 2005 and the amendments within the Supplemental Deed dated 28 April 2006.

Policy for Members' drawings, subscriptions and repayments of Members' capital

Policies for Members' drawings, subscriptions and repayment of Members' capital are governed by the Limited Liability Partnership Agreement dated 29 July 2005 and the amendments within the Supplemental Deed dated 28 April 2006.

Members

The Members of the LLP during the year were as follows:

C Grosso
F Ceretti
FIM Limited
T Healy
G D'Oria
A Albright
B Robertson

J Chapman (resigned 05 April 2008)

M Jochems (appointed 1 September 2007)

C Grosso and F Ceretti are Designated Members. The Managing Member is FIM Limited.

Auditors

A resolution to reappoint Ernst & Young LLP as auditors will be put to the Members at the Annual General Meeting. So far as the Members are aware, there is no relevant audit information of which the LLP's auditors are unaware. The Members have taken all steps that they ought to have taken as Members in order to make themselves aware of any relevant audit information and to establish that the auditors are aware of this information.

By order of the Members



Member

30 April 2008

Statement of Members' responsibilities in respect of the financial statements

The Members are responsible for preparing the annual report and financial statements in accordance with the applicable United Kingdom Generally Accepted Accounting Practice

The Limited Liability Partnerships Regulations 2001 (LLP regulations) made under the Limited Liability Partnerships Act 2000 require the Members to prepare financial statements for each financial year which give a true and fair view of the state of affairs and of the profit or loss of the partnership for that period. In preparing those financial statements, the Members are required to

- select suitable accounting policies and then apply them consistently,
- make judgements and estimates that are reasonable and prudent,
- state whether applicable accounting standards have been followed, subject to any material departures and explained in the financial statements, and
- prepare the financial statements in accordance with generally accepted accounting principles applied on a consistent basis

Under the LLP Regulations the Members are responsible for ensuring that proper accounting records are kept which disclose with reasonable accuracy the financial position of the partnership and which enable them to ensure that the financial statements will comply with those regulations. The Members have a general responsibility for taking such steps as are reasonably open to them to safeguard the assets of the partnership and to prevent and detect fraud and other irregularities.

Independent auditors' report

to the Members of FIM Advisers LLP

We have audited the Limited Liability Partnership's financial statements for the year ended 31 December 2007 which comprise Profit and Loss Account, Statement of Total Recognised Gains and Losses, Balance Sheet, Statement of Cash Flows and the related notes 1 to 13. These financial statements have been prepared on the basis of the accounting policies set out therein.

This report is made solely to the Members, as a body, in accordance with the Limited Liability Partnerships Regulations 2001 made under the Limited Liability Partnerships Act 2000. Our audit work has been undertaken so that we might state to the Members those matters we are required to state to them in an auditors' report and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the Members as a body, for our audit work, for this report, or for the opinions we have formed.

Respective responsibilities of Members and auditors

As described in the Statement of Members' Responsibilities the Members are responsible for the preparation of the financial statements in accordance with applicable United Kingdom law and accounting standards.

Our responsibility is to audit the financial statements in accordance with relevant legal and regulatory requirements and International Standards on Auditing (UK and Ireland).

We report to you our opinion as to whether the financial statements give a true and fair view and are properly prepared in accordance with the Limited Liability Partnerships Regulations 2001 made under the Limited Liability Partnerships Act 2000. We also report to you if, in our opinion, the LLP has not kept proper accounting records, or if we have not received all the information and explanations we require for our audit.

We read the Members' Report and consider the implications for our report if we become aware of any apparent misstatements within it.

Basis of audit opinion

We conducted our audit in accordance with International Standards on Auditing (UK and Ireland) issued by the Auditing Practices Board. An audit includes examination, on a test basis, of evidence relevant to the amounts and disclosures in the financial statements. It also includes an assessment of the significant estimates and judgements made by the Members in the preparation of the financial statements, and of whether the accounting policies are appropriate to the LLP's circumstances, consistently applied and adequately disclosed.

We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or other irregularity or error. In forming our opinion we also evaluated the overall adequacy of the presentation of information in the financial statements.

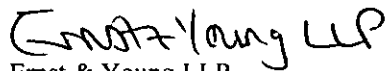
Independent auditors' report

to the Members of FIM Advisers LLP (continued)

Opinion

In our opinion

- the financial statements give a true and fair view, in accordance with United Kingdom Generally Accepted Accounting Practice, of the state of affairs of the LLP as at 31 December 2007 and of its profit for the year then ended, and
- the financial statements have been properly prepared in accordance with the Limited Liability Partnerships Regulations 2001



Ernst & Young LLP
Registered Auditor
London

30 April 2008

FIM Advisers LLP

Profit and loss account

For the year ended 31 December 2007

		<i>Year ended 31 December 2007</i>	<i>Year ended 31 December 2006</i>
	<i>Notes</i>	<i>£</i>	<i>£</i>
Income	2	15,987,981	9,975,119
Expenses			
Administration expenses		(1,228,034)	(652,773)
Expenses reimbursed to FIM Limited		(4,622,103)	(3,978,387)
Operating profit	3	10,137,844	5,343,959
Income from investments	4	2,665,159	769,315
Interest receivable		95,076	105,913
Interest payable		(82,018)	(67,338)
Profit on foreign exchange		52,923	(16,392)
Profit before Members' remuneration and profit shares		12,868,984	6,135,457
Members' remuneration charged as an expense	5	(1,135,000)	(780,000)
Profit available for discretionary division among Members		11,733,984	5,355,457

All amounts are in respect of continuing activities

Statement of total recognised gains and losses

There were no recognised gains and losses in the year other than the profit for the year

The notes on pages 9 to 13 form part of these financial statements

FIM Advisers LLP

Balance sheet

at 31 December 2007

	Notes	2007 £	2006 £
Fixed assets			
Investments	6	11,052	11,132
Current assets			
Debtors	7	5,798,261	3,203,521
Cash		2,248,574	3,566,035
		<u>8,046,835</u>	<u>6,769,556</u>
Current liabilities			
Creditors amounts falling due within one year	8	546,709	242,806
Net current assets		<u>7,500,126</u>	<u>6,526,750</u>
Net assets attributable to Members		<u>7,511,178</u>	<u>6,537,882</u>
Represented by			
Loans and other debts due to Members within one year			
Other debts	9	1,561,159	967,723
		<u>1,561,159</u>	<u>967,723</u>
Equity			
Members' capital	9	2,710,000	2,709,000
Non-cash capital contribution	9	(1,400,000)	(1,400,000)
Members' other interests – other reserves	9	4,640,019	4,261,159
		<u>5,950,019</u>	<u>5,570,159</u>
		<u>7,511,178</u>	<u>6,537,882</u>
		2007 £	2006 £
Total Members' interests			
Loans and other debts due to Members		1,561,159	967,723
Members' other interests		5,950,019	5,570,159
Members' total interests	9	<u>7,511,178</u>	<u>6,537,882</u>

Signed on behalf of the Members


Member

30 April 2008

The notes on pages 9 to 13 form part of these financial statements

FIM Advisers LLP

Statement of cash flows

at December 2007

		<i>Year ended 31 December 2007</i>	<i>Year ended 31 December 2006</i>
	<i>Notes</i>	<i>£</i>	<i>£</i>
Net cash inflow from operating activities	10 (a)	7,900,010	4,962,548
Returns on investments and servicing of finance	10 (b)	2,678,217	807,890
Transactions with Members	10 (b)	(11,895,688)	(3,740,537)
(Decrease)/increase in cash	10 (c)	(1,317,461)	2,029,901

The notes on pages 9 to 13 form part of these financial statements

FIM Advisers LLP

Notes to the financial statements

at 31 December 2007

1. Accounting policies

Basis of accounting

The financial statements have been prepared in accordance with applicable accounting standards, and the historical cost convention. The Members adopted the provisions of the Statement of Recommended Practice 'Accounting by Limited Liability Partnerships' (SORP) issued in March 2006. The financial statements have been prepared on this basis.

Consolidation

The LLP has taken advantage of the exemption under FRS 1, not to prepare consolidated accounts on the basis that it is a subsidiary and the LLP's results are included in the consolidated financial statements of the ultimate parent undertaking, FIM Limited.

Investments

Investments are included at cost, restated at the balance sheet date rate of exchange where acquired in foreign currency, less a provision for any permanent diminution in value.

Foreign currencies

Monetary assets and liabilities in foreign currencies are translated into sterling at the rates of exchange ruling at the balance sheet date. Transactions in foreign currencies are translated into sterling at the rate of exchange ruling at the date of the transaction. Exchange differences are taken to the profit and loss account.

Taxation

No provision has been made for taxation in the accounts. Each Member is exclusively liable for any tax liabilities arising out of their interest in the LLP, which will be assessed on the individual Members and not on the LLP.

2. Income

All income is stated net of VAT and relates to one continuing activity being the supply of investment services to clients based in Europe and the Americas. Income is recognised on a receivable basis.

3. Operating profit

This is stated after charging

	<i>Year ended 31 December 2007 £</i>	<i>Year ended 31 December 2006 £</i>
Auditors' remuneration		
Audit services	—	—
Non audit services tax services	—	—
	<u> </u>	<u> </u>

The remuneration for audit services of £12,600 (2006 - £12,000) is borne by the LLP's parent undertaking, FIM Limited.

FIM Advisers LLP

Notes to the financial statements

at 31 December 2007

4. Income from investments

Income from investments represents dividends received from subsidiary undertakings. The amount of £2,665,159 (2006 - £769,315) received during the year, was in relation to dividends paid by FIM Management Limited and FIM Holdings Limited.

5. Members' remuneration

	<i>Year ended 31 December 2007 £</i>	<i>Year ended 31 December 2006 £</i>
Profit for the financial year before Members' remuneration and profit share	12,868,984	6,135,457
Members' remuneration	1,135,000	780,000
Profit for the financial year available for discretionary division among Members	11,733,984	5,355,457
Amount in respect of the Member with the largest entitlement to profit during the year	4,816,776	1,394,159

The average number of Members in the year was 8

6. Investments

	<i>Unlisted investments 2007 £</i>	<i>Unlisted investments 2006 £</i>
Cost		
At 1 January 2007	11,132	11,982
Exchange rate adjustment	(80)	(850)
Additions	—	—
At 31 December 2007	11,052	11,132

Details of the above holdings are

	<i>Country of registration</i>	<i>Principle activity</i>	<i>Holding</i>
FIM Holdings Limited	England and Wales	Holding Company	100%
FIM Management Limited	Bermuda	Investment Services	100%

FIM Advisers LLP

Notes to the financial statements

at 31 December 2007

7. Debtors

	2007	2006
	£	£
Trade debtors	1,507,687	1,232,884
Due from group companies	4,283,329	1,960,295
Other debtors	7,245	10,342
	<u>5,798,261</u>	<u>3,203,521</u>

8. Creditors: amounts falling due within one year

	2007	2006
	£	£
Owed to group companies	473,189	232,231
Accruals and deferred income	73,520	10,575
	<u>546,709</u>	<u>242,806</u>

9. Reconciliation of movements in Members' other and Members' total interests

	Members' capital	Other reserves	Total Members' other interests	Loans and other debts due to/(from) Members	Members' total interests
	£	£	£	£	£
At 31 December 2006	2,709,000	2,861,159	5,570,159	967,723	6,537,882
Transfer from capital to equity	—	—	—	—	—
Members' remuneration charged as an expense	—	—	—	1,135,000	1,135,000
Profit for the year available for discretionary allocation	—	11,733,984	11,733,984	—	11,733,984
Discretionary allocations to Members	—	(11,355,124)	(11,355,124)	11,355,124	—
Payments to Members	—	—	—	(16,518,791)	(16,518,791)
Capital contributions	1,000	—	1,000	—	1,000
Expenses incurred by Members on behalf of the LLP	—	—	—	4,622,103	4,622,103
	<u>2,710,000</u>	<u>3,240,019</u>	<u>5,950,019</u>	<u>1,561,159</u>	<u>7,511,178</u>

Other reserves consist of	
Unallocated profits	4,640,019
Non-cash capital contribution	(1,400,000)
	<u>3,240,019</u>

FIM Advisers LLP

Notes to the financial statements

at 31 December 2007

10. Notes to the statement of cash flows

(a) Reconciliation of operating profit to net cash inflow from operating activities

	<i>Year ended 31 December 2007 £</i>	<i>Year ended 31 December 2006 £</i>
Operating profit	10,137,844	5,343,959
Increase in debtors	(2,594,740)	(487,478)
Increase in creditors	303,903	121,609
Gain/(loss) on foreign exchange	52,923	(16,392)
	<u>7,900,010</u>	<u>4,962,548</u>

(b) Analysis of cash flows for headings netted in the statement of cash flows

Returns on investments and servicing of finance

Income from investments	2,665,159	769,315
Interest received	62,037	105,913
Interest paid	(48,979)	(67,338)
	<u>2,678,217</u>	<u>807,890</u>

Transactions with Members

Capital contributions	1,000	9,000
Payments to Members	(16,518,791)	(7,727,924)
Expenses incurred by Members	4,622,103	3,978,387
	<u>(11,895,688)</u>	<u>(3,740,537)</u>

(c) Analysis of changes in net funds

	<i>At 31 December 2006 £</i>	<i>Cash flows £</i>	<i>At 31 December 2007 £</i>
Cash at bank	3,566,035	(1,317,461)	2,248,574

FIM Advisers LLP

Notes to the financial statements

at 31 December 2007

11. Related parties

The LLP has taken advantage of the exemption under FRS 8 not to disclose any transactions with entities in the same group on the basis that it is a subsidiary and its results are included in the consolidated financial statements of the ultimate parent undertaking, FIM Limited. The consolidated financial statements of FIM Limited are available from the LLP's registered office.

12. Commitments

In order to hedge effectively against foreign exchange transaction risk the LLP has entered into a number of forward foreign currency contracts. At the year end, there were 5 open contracts to sell a total of US\$ Nil and €5,340,000 (2006 - US\$1,825,000 and €2,525,000) which expire during the succeeding accounting period.

13. Ultimate parent undertaking and controlling party

The LLP's immediate and ultimate parent undertaking is FIM Limited, a company incorporated in England and Wales. FIM Limited is controlled jointly by C Grosso and F Ceretti.

EXHIBIT D

FIM Advisers LLP

Report and Financial Statements

For the year ended 31 December 2008

FRIDAY



L55 *LXTTTEJU* 30/10/2009 113
COMPANIES HOUSE

FIM Advisers LLP

Registered No: OC309543

Members

C Grosso
F Ceretti
FIM Limited
T Healy
G D'Oria
A Albrighti
B Robertson
M Jochems
S Dragoo (appointed 01 May 2008)

Auditors

Ernst & Young LLP
1 More London Place
London SE1 2AF

Bankers

HSBC Plc
69 Pall Mall
London SW1Y 5EY

Solicitors

Simmons & Simmons
CityPoint
One Ropemaker Street
London EC2Y 9SS

Registered Office

20 St James's Street
London
SW1A 1ES

Members' report

The Members present their report and financial statements for the year ended 31 December 2008.

Principal activity and review of the business

The principal activity of FIM Advisers LLP (the "LLP") is the provision of investment services. The LLP is regulated by the Financial Services Authority.

As with most fund of hedge fund ("FoHF") advisers, 2008 was a difficult and turbulent year for FIM. The well-publicised and dramatic events in the world's financial markets, and the resulting illiquidity and negative performance of many hedge funds, lead to substantial redemptions from FoHFs including those managed/advised by FIM. In turn, this lead to a significant decline in FIM's assets under management/ advice from a peak of USD 4.4bn (approx.) in March 2008 to USD 1.8bn (approx.) at 31 December 2008, and forced FIM to scale back its operations in November 2008.

Certain FoHFs managed/advised by FIM (the "Funds") had invested part of their assets in Kingate Global Fund, Ltd. and Kingate Euro Fund, Ltd. (the "Kingate Funds"), whose assets were managed by Kingate Management Limited (a Bermudan company). Kingate Management Limited outsourced the investment management of the assets of the Kingate Funds to Bernard L. Madoff Investment Securities LLC via a managed account structure. Certain Funds had invested approximately 5-7% of their assets in the Kingate Funds, and the total amount invested across these Funds was approximately USD146m. In these cases, the Funds' investment in the Kingate Funds has been written down to nil.

FIM acted as a consultant to Kingate Management Limited in relation to the Kingate Funds. In that regard, FIM has received some potentially litigious correspondence in recent months. However, as at the date of this report FIM is not subject to any litigation proceedings.

Results and distributions

The results for the year are shown in the profit and loss account on page 7. The LLP's balance sheet as detailed on page 8 shows a satisfactory position with Members' interests amounting to £4,726,782 (2007 - £7,511,178).

Members' profit allocation

Profits are shared among the Members as decided by the Managing Member and governed by the Limited Liability Partnership Agreement dated 29 July 2005 and the amendments within the Supplemental Deeds dated 28 April 2006 and 8 April 2008.

Policy for Members' drawings, subscriptions and repayments of Members' capital

Policies for Members' drawings, subscriptions and repayment of Members' capital are governed by the Limited Liability Partnership Agreement dated 29 July 2005 and the amendments within the Supplemental Deed dated 28 April 2006 and 8 April 2008.

Members

The Members of the LLP during the year were as follows:

C Grosso
F Ceretti
FIM Limited
T Healy
G D'Oria
A Albrighi
B Robertson
J Chapman (resigned 5 April 2008)

FIM Advisers LLP

Members' report

M Jochems
S Dragoo (appointed 01 May 2008)

C Grosso and F Ceretti are Designated Members. The Managing Member is FIM Limited.

Auditors

A resolution to reappoint Ernst & Young LLP as auditors will be put to the Members at the Annual General Meeting. So far as the Members are aware there is no relevant audit information of which the LLP's auditors are unaware. The Members have taken all steps that they ought to have taken as Members in order to make themselves aware of any relevant audit information and to establish that the auditors are aware of this information.

By order of the Members



Member

2714109

Statement of Members' responsibilities in respect of the financial statements

The Members are responsible for preparing the annual report and financial statements in accordance with the applicable United Kingdom Generally Accepted Accounting Practice.

The Limited Liability Partnerships Regulations 2001 (LLP regulations) made under the Limited Liability Partnerships Act 2000 require the Members to prepare financial statements for each financial year which give a true and fair view of the state of affairs and of the profit or loss of the partnership for that period. In preparing those financial statements, the Members are required to:

- select suitable accounting policies and then apply them consistently;
- make judgements and estimates that are reasonable and prudent;
- state whether applicable accounting standards have been followed, subject to any material departures and explained in the financial statements; and
- prepare the financial statements in accordance with generally accepted accounting principles applied on a consistent basis.

Under the LLP Regulations the Members are responsible for ensuring that proper accounting records are kept which disclose with reasonable accuracy the financial position of the partnership and which enable them to ensure that the financial statements will comply with those regulations. The Members have a general responsibility for taking such steps as are reasonably open to them to safeguard the assets of the partnership and to prevent and detect fraud and other irregularities.

Independent auditors' report

to the Members of FIM Advisers LLP

We have audited the Limited Liability Partnership's financial statements for the year ended 31 December 2008 which comprise Profit and Loss Account, Statement of Total Recognised Gains and Losses, Balance Sheet, Statement of Cash Flows and the related notes 1 to 13. These financial statements have been prepared on the basis of the accounting policies set out therein.

This report is made solely to the Members, as a body, in accordance with the Limited Liability Partnerships Regulations 2001 made under the Limited Liability Partnerships Act 2000. Our audit work has been undertaken so that we might state to the Members those matters we are required to state to them in an auditors' report and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the Members as a body, for our audit work, for this report, or for the opinions we have formed.

Respective responsibilities of Members and auditors

As described in the Statement of Members' Responsibilities the Members are responsible for the preparation of the financial statements in accordance with applicable United Kingdom law and accounting standards.

Our responsibility is to audit the financial statements in accordance with relevant legal and regulatory requirements and International Standards on Auditing (UK and Ireland).

We report to you our opinion as to whether the financial statements give a true and fair view and are properly prepared in accordance with the Limited Liability Partnerships Regulations 2001 made under the Limited Liability Partnerships Act 2000. We also report to you if, in our opinion, the LLP has not kept proper accounting records, or if we have not received all the information and explanations we require for our audit.

We read the Members' Report and consider the implications for our report if we become aware of any apparent misstatements within it.

Basis of audit opinion

We conducted our audit in accordance with International Standards on Auditing (UK and Ireland) issued by the Auditing Practices Board. An audit includes examination, on a test basis, of evidence relevant to the amounts and disclosures in the financial statements. It also includes an assessment of the significant estimates and judgements made by the Members in the preparation of the financial statements, and of whether the accounting policies are appropriate to the LLP's circumstances, consistently applied and adequately disclosed.

We planned and performed our audit so as to obtain all the information and explanations which we considered necessary in order to provide us with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or other irregularity or error. In forming our opinion we also evaluated the overall adequacy of the presentation of information in the financial statements.

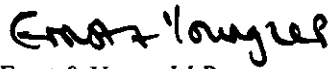
Independent auditors' report

to the Members of FIM Advisers LLP (continued)

Opinion

In our opinion:

- the financial statements give a true and fair view, in accordance with United Kingdom Generally Accepted Accounting Practice, of the state of affairs of the LLP as at 31 December 2008 and of its profit for the year then ended; and
- the financial statements have been properly prepared in accordance with the Limited Liability Partnerships Regulations 2001.



Ernst & Young LLP
Registered Auditor
London

27 April 2009

FIM Advisers LLP

Profit and loss account

For the year ended 31 December 2008

		<i>Year ended 31 December 2008</i>	<i>Year ended 31 December 2007</i>
	<i>Notes</i>	<i>£</i>	<i>£</i>
Income	2	11,228,090	15,987,981
Expenses			
Administration expenses		(1,331,860)	(1,228,034)
Expenses reimbursed to FIM Limited		(4,863,034)	(4,622,103)
Operating profit	3	5,033,196	10,137,844
Income from investments	4	6,299,478	2,665,159
Interest receivable		69,266	95,076
Interest payable		(72,783)	(82,018)
Profit on foreign exchange		146,795	52,923
Profit before Members' remuneration and profit shares		11,475,952	12,868,984
Members' remuneration charged as an expense	5	(1,158,333)	(1,135,000)
Profit available for discretionary division among Members		10,317,619	11,733,984

All amounts are in respect of continuing activities.

Statement of total recognised gains and losses

There were no recognised gains and losses in the year other than the profit for the year.

The notes on pages 10 to 14 form part of these financial statements.

FIM Advisers LLP

Balance sheet

at 31 December 2008

	Notes	2008 £	2007 £
Fixed assets			
Investments	6	13,233	11,052
Current assets			
Debtors	7	1,077,971	5,798,261
Cash		4,109,102	2,248,574
		<u>5,187,073</u>	<u>8,046,835</u>
Current liabilities			
Creditors: amounts falling due within one year	8	473,524	546,709
Net current assets		<u>4,713,549</u>	<u>7,500,126</u>
Net assets attributable to Members		<u>4,726,782</u>	<u>7,511,178</u>
Represented by:			
Loans and other debts due to Members within one year			
Other debts	9	762,219	1,561,159
		<u>762,219</u>	<u>1,561,159</u>
Equity			
Members' capital	9	2,710,000	2,710,000
Non-cash capital contribution	9	(1,400,000)	(1,400,000)
Members' other interests – other reserves	9	2,654,563	4,640,019
		<u>3,964,563</u>	<u>5,950,019</u>
		<u>4,726,782</u>	<u>7,511,178</u>
		<u>2008</u>	<u>2007</u>
		£	£
Total Members' interests			
Loans and other debts due to Members		762,219	1,561,159
Members' other interests		3,964,563	5,950,019
Members' total interests	9	<u>4,726,782</u>	<u>7,511,178</u>
Signed on behalf of the Members	W 27/4/09		
Member			

The notes on pages 10 to 14 form part of these financial statements.

FIM Advisers LLP

Statement of cash flows

at December 2008

		<i>Year ended 31 December 2008</i>	<i>Year ended 31 December 2007</i>
	<i>Notes</i>	<i>£</i>	<i>£</i>
Net cash inflow from operating activities	10 (a)	9,827,096	7,900,010
Returns on investments and servicing of finance	10 (b)	6,293,780	2,678,217
Transactions with Members	10 (b)	(14,260,348)	(11,895,688)
(Decrease)/increase in cash	10 (c)	1,860,528	(1,317,461)

The notes on pages 10 to 14 form part of these financial statements.

FIM Advisers LLP

Notes to the financial statements

at 31 December 2008

1. Accounting policies

Basis of accounting

The financial statements have been prepared in accordance with applicable accounting standards, under the historical cost convention and in accordance with the Statement of Recommended Practice 'Accounting by Limited Liability Partnerships' (SORP) issued in March 2006.

Consolidation

The LLP has taken advantage of the exemption under FRS 1, not to prepare consolidated accounts on the basis that it is a subsidiary and the LLP's results are included in the consolidated financial statements of the ultimate parent undertaking, FIM Limited.

Investments

Investments are included at cost, restated at the balance sheet date rate of exchange where acquired in foreign currency, less a provision for any permanent diminution in value.

Foreign currencies

Monetary assets and liabilities in foreign currencies are translated into sterling at the rates of exchange ruling at the balance sheet date. Transactions in foreign currencies are translated into sterling at the rate of exchange ruling at the date of the transaction. Exchange differences are taken to the profit and loss account.

Taxation

No provision has been made for taxation in the accounts. Each Member is exclusively liable for any tax liabilities arising out of their interest in the LLP, which will be assessed on the individual Members and not on the LLP.

2. Income

All income is stated net of VAT and relates to one continuing activity being the supply of investment services to clients based primarily in Europe. Income is recognised on a receivable basis.

3. Operating profit

This is stated after charging:

	<i>Year ended 31 December 2008 £</i>	<i>Year ended 31 December 2007 £</i>
Auditors' remuneration:		
Audit services	—	—
Non audit services: tax services	—	—
	<hr/>	<hr/>

The remuneration for audit services of £12,600 (2007 - £12,600) is borne by the LLP's parent undertaking, FIM Limited.

FIM Advisers LLP

Notes to the financial statements

at 31 December 2008

4. Income from investments

Income from investments represents dividends received from subsidiary undertakings. The amount of £6,299,478 (2007 - £2,665,159) received during the year, was in relation to dividends paid by FIM Management Limited and FIM Holdings Limited.

5. Members' remuneration

	<i>Year ended 31 December 2008 £</i>	<i>Year ended 31 December 2007 £</i>
Profit for the financial year before Members' remuneration and profit share	11,475,952	12,868,984
Members' remuneration	(1,158,333)	(1,135,000)
Profit for the financial year available for discretionary division among Members	10,317,619	11,733,984
Amount in respect of the Member with the largest entitlement to profit during the year	£3,474,181	4,816,776

The average number of Members in the year was 9.

6. Investments

	<i>Unlisted investments 2008 £</i>	<i>Unlisted investments 2007 £</i>
Cost:		
At 1 January 2008	11,052	11,132
Exchange rate adjustment	2,181	(80)
Additions	-	-
At 31 December 2008	13,233	11,052

Details of the above holdings are:

	<i>Country of registration</i>	<i>Principle activity</i>	<i>Holding</i>
FIM Holdings Limited	England and Wales	Holding Company	100%
FIM Management Limited	Bermuda	Investment Services	100%

FIM Advisers LLP

Notes to the financial statements

at 31 December 2008

7. Debtors

	2008	2007
	£	£
Trade debtors	610,970	1,507,687
Due from group companies	462,500	4,283,329
Other debtors	4,501	7,245
	<u>1,077,971</u>	<u>5,798,261</u>

8. Creditors: amounts falling due within one year

	2008	2007
	£	£
Owed to group companies	379,533	473,189
Accruals and deferred income	93,991	73,520
	<u>473,524</u>	<u>546,709</u>

9. Reconciliation of movements in Members' other and Members' total interests

	Members' capital £	Other reserves £	Total Members' other interests £	Loans and other debts due to/(from) Members £	Members' total interests £
At 31 December 2007	2,710,000	3,240,019	5,950,019	1,561,159	7,511,178
Transfer from capital to equity					—
Members' remuneration charged as an expense		—	—	1,158,333	1,158,333
Profit for the year available for discretionary allocation		10,317,619	10,317,619	—	10,317,619
Discretionary allocations to Members		(12,303,075)	(12,303,075)	12,303,075	—
Payments to Members				(19,123,382)	(19,123,382)
Capital contributions					
Expenses incurred by Members on behalf of the LLP				4,863,034	4,863,034
	<u>2,710,000</u>	<u>1,254,563</u>	<u>3,964,563</u>	<u>762,219</u>	<u>4,726,782</u>
Other reserves consist of:					
Unallocated profits		2,654,563			
Non-cash capital contribution		(1,400,000)			
		<u>1,254,563</u>			

FIM Advisers LLP

Notes to the financial statements

at 31 December 2008

10. Notes to the statement of cash flows

(a) Reconciliation of operating profit to net cash inflow from operating activities:

	<i>Year ended</i> <i>31 December</i> <i>2008</i> <i>£</i>	<i>Year ended</i> <i>31 December</i> <i>2007</i> <i>£</i>
Operating profit	5,033,196	10,137,844
Increase in debtors	4,720,290	(2,594,740)
Increase in creditors	(73,185)	303,903
Gain/(loss) on foreign exchange	146,295	52,923
	<u>9,827,096</u>	<u>7,900,010</u>

(b) Analysis of cash flows for headings netted in the statement of cash flows

Returns on investments and servicing of finance:

Income from investments	6,299,478	2,665,159
Interest received	69,266	62,037
Interest paid	(72,783)	(48,979)
Exchange rate adjustment	(2,181)	—
	<u>6,293,780</u>	<u>2,678,217</u>

Transactions with Members:

Capital contributions	—	1,000
Payments to Members	(19,123,382)	(16,518,791)
Expenses incurred by Members	4,863,034	4,622,103
	<u>(14,260,348)</u>	<u>(11,895,688)</u>

(c) Analysis of changes in net funds

	<i>At</i> <i>31 December</i> <i>2007</i> <i>£</i>	<i>Cash</i> <i>flows</i> <i>£</i>	<i>At</i> <i>31 December</i> <i>2008</i> <i>£</i>
Cash at bank	2,248,574	1,860,528	4,109,102

FIM Advisers LLP

Notes to the financial statements

at 31 December 2008

11. Related parties

The LLP has taken advantage of the exemption under FRS 8 not to disclose any transactions with entities in the same group on the basis that it is a subsidiary and its results are included in the consolidated financial statements of the ultimate parent undertaking, FIM Limited. The consolidated financial statements of FIM Limited are available from the LLP's registered office.

12. Commitments

In order to hedge effectively against foreign exchange transaction risk the LLP has entered into a number of forward foreign currency contracts. At the year end, there were 4 open contracts to sell a total of €920,000 (2007 - €5,340,000) which expire during the succeeding accounting period.

13. Ultimate parent undertaking and controlling party

The LLP's immediate and ultimate parent undertaking is FIM Limited, a company incorporated in England and Wales. FIM Limited is controlled jointly by C Grosso and F Ceretti.

EXHIBIT E

Delaware

PAGE 1

The First State

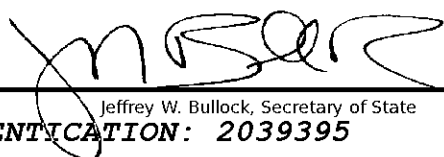
I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF
DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT
COPY OF THE CERTIFICATE OF DISSOLUTION OF "FIM (USA) INC.",
FILED IN THIS OFFICE ON THE EIGHTH DAY OF JUNE, A.D. 2009, AT
4:04 O'CLOCK P.M.



3910776 8100

150052777

You may verify this certificate online
at corp.delaware.gov/authver.shtml


Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 2039395

DATE: 01-14-15

State of Delaware
Secretary of State
Division of Corporations
Delivered 04:04 PM 06/08/2009
FILED 04:04 PM 06/08/2009
SRV 090597413 - 3910776 FILE

**CERTIFICATE OF DISSOLUTION
OF
FIM (USA) INC.**

It is hereby certified that:

FIRST: The name of the corporation is FIM (USA) INC. (the "Corporation").

SECOND: The dissolution of the Corporation was authorized on May 9, 2009.

THIRD: The dissolution of the Corporation has been authorized by all of the stockholders of the Corporation entitled to vote on a dissolution in accordance with subsection (c) of Section 275 of the General Corporation Law of the State of Delaware.

FOURTH: The names and addresses of the directors of the Corporation and the names, titles and addresses of the officers of the Corporation are as follows:

DIRECTORS

<u>Name</u>	<u>Address</u>
Scott Drago	c/o FIM (USA) Inc. 780 Third Avenue, 6th Floor New York, NY 10017
Tom Healy	c/o FIM Advisers LLP 20 St. James's Street London SW1A 1ES United Kingdom
Michael G. Tannenbaum	c/o Tannenbaum Helpert, et al 900 Third Avenue New York, NY 10022

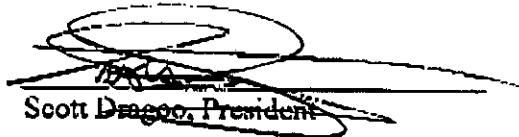
OFFICERS

<u>Name</u>	<u>Title</u>	<u>Address</u>
-------------	--------------	----------------

[859057-2]

Scott Drago	President	c/o FIM (USA) Inc. 780 Third Avenue, 6th Floor New York, NY 10017
Tom Healy	Vice President	c/o FIM Advisers LLP 20 St. James's Street London SW1A 1ES United Kingdom
Michael G. Tannenbaum	Secretary (non-executive)	c/o Tannenbaum Holpcorn, et al 900 Third Avenue New York, NY 10022

Signed on June 8, 2009.


Scott Drago, President